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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1938

No. 21

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WM. H. NEBLETT, VERNON BETTIN, WILLIAM  
GEORGE DICKINSON AND ALFRED F. MAC-  
DONALD, PETITIONERS,

vs.

SAMUEL L. CARPENTER, JR., INSURANCE COM-  
MISSIONER OF THE STATE OF CALIFORNIA,  
ET AL.

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF CALIFORNIA

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PETITION FOR CERTIORARI FILED APRIL 2, 1938.

CERTIORARI GRANTED MAY 16, 1938.





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*al., for Themselves and for Other Non-*  
*Cancellable Policyholders Similarly Situated*  
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*Other Non-Cancellable Policyholders Simi-*  
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iv.

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Paschall and Ralph J. Wetzel.*

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*Attorney for Respondents J. Parker Evans, on  
Behalf of Himself and All Other Holders  
of Active Life Non-Cancellable Income  
Policies Issued in the State of Alabama  
Who May Wish to Join With Him in the  
Proceeding.*





2317 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404,673.

**Answer of Interveners to Petition and Order to Show Cause.**

2318

Come now the interveners, Marshall D. Hall and Joseph C. McManus, on behalf of themselves and of all holders of non-cancellable income policies and for answer to the petition of petitioner / with respect to rehabilitation, sale and transfer of assets and reinsurance plan and agreement on file herein, deny and allege as follows:

I.

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Answering paragraphs II, III, IV, V, VI, VII, VIII, IX and X of petitioner's petition, these interveners have not sufficient information or belief upon the subject to enable them to answer the same, and placing their denial on that ground, deny each and every allegation therein contained; except that these interveners admit that the paper writings referred to in said paragraphs were executed and the orders referred to in said paragraphs were made.

2320 As a first defense, these interveners allege:

II.

That the order of July 22, 1936 permitting and approving and authorizing rehabilitation and more fully described in paragraph V of the petition and the order of July 23, 1936 ordering the approval of the amendment of the rehabilitation sale and transfer of assets and reinsurance agreement have both been vacated by this court as being void orders and hence the agreement is

2321 entirely void.

As a further, second and separate defense, these interveners allege:

III.

Upon information and belief that the Pacific Mutual Life Insurance Company of California mingled all of its assets for many years and there was no way in which a court could determine which of the assets were held as reserve for the life insurance policy holders and which of the assets were held as reserve for the non-cancellable income policy holders.

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IV.

Upon information and belief that it was only very recently that an attempt was made to segregate these reserves and that they were still intermingled and that any attempt to segregate them was a mere matter of bookkeeping and no actual and legal segregation of assets was made.

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V.

Upon information and belief that all of the reserves were so intermingled that it is impossible for this court to property or legally segregate them and that the life policy holders had no lien upon any of the assets of the company which were superior or different from the lien of the non-cancellable income policy holders and that the entire assets of the company constitute a trust fund for its creditors.

2324

VI.

Upon information and belief that if this company is declared insolvent as is prayed for in the petition that thereupon and immediately every holder of a life insurance policy and every holder of a non-cancellable income policy becomes a creditor of the company and ceases to be a policy holder, and his only right thereafter is to appear as a creditor of the company and to file a claim for the damages which he can prove for

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the breach of the contract made by the insurance company.

VII.

That in that event every life insurance policy holder and every holder of non-cancellable income policies is entitled to an equal pro-rata share of its assets according to the amount of damages which he can prove.

VIII.

That the fact that as alleged in the petition and in other petitions on file with this court that



2326 the life insurance contracts were profitable contracts to the company and the non-cancellable income policies were unprofitable contracts to the company is entirely immaterial and that every creditor is entitled to his pro-rata share of the assets of the company regardless of whether the company, before its insolvency, happened to have a profitable or unprofitable contract with him.

As a further, third and separate defense, these interveners allege:

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IX.

That the said alleged rehabilitation agreement is not a rehabilitation agreement for the following reasons:

(1) It does not rehabilitate the Pacific Mutual Life Insurance Company of California, which remains insolvent.

(2) It does not follow the statute which prescribes the method of rehabilitating a company.

2328 (3) The agreement was made in advance of a full hearing before the court and is hence void under the statute.

(4) That it is entirely contrary to public policy and to the laws of the state of California to permit the Insurance Commissioner to be the sole stockholder of a rehabilitated insurance company and, on the contrary, the policy of the state, as declared by its statutory enactments, is to divorce any control by the Insurance Commis-

2329 sioner over a rehabilitated company except as to the approval of its investments.

(5) That the new corporation, so called under the agreement, should be under the control of its directors under the laws of the state of California, and not under the control or supervision of the Insurance Commissioner, which is contrary to the public policy and to the declared statutory policy of the state of California, and is contrary to the statute.

2330 (6) That the said agreement is not a re-insurance agreement in any sense of the word as it provides for a novation.

(7) That the said agreement is a plain reorganization agreement, and as such is an attempt by the Insurance Commissioner to substitute for the judgment of the interested parties and the court, the judgment of the Insurance Commissioner as to what the rights of various types of creditors on reorganization shall be, which is wholly unlawful, violates section 10, article I of the Constitution of the United States, and if ratified by the court after the same was made, said ratification would be a violation of the Fifth Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States.

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As a further, fourth and separate defense, these interveners allege:

X.

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That the said rehabilitation, sale and transfer of assets and reinsurance agreement referred to in said petition and made and entered into on the 23rd day of July, 1936 between the Pacific Mutual Life Insurance Company of California, a corporation and Samuel L. Carpenter Jr., as Insurance Commissioner of the State of California and as liquidator of the Pacific Mutual Life Insurance Company of California, a corporation,

2333

is entirely void and of no effect and is not binding upon the parties thereto and that the same is beyond the authority of the said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of the Pacific Mutual Life Insurance Company of California, and that the execution of said agreement and the transfer of the assets by the said Insurance Commissioner is wholly unauthorized by the Insurance Code of the state of California,

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and is entirely beyond the power of the said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of the Pacific Mutual Life Insurance Company of California, and the said agreement being void and beyond the power of the Insurance Commissioner under the statute in such cases made and provided, that the said agreement is of no binding effect whatever on any of the parties thereto, and that any acts done pursuant thereto are wholly null and void.

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XI.

That the said agreement provided in paragraph II thereof that the Commissioner shall grant, bargain, sell, assign, convey, transfer, set over and deliver to the new company the assets of the old company.

XII.

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Upon information and belief that the said agreement to transfer the said assets by the said Insurance Commissioner was wholly beyond his power as Insurance Commissioner and that the same is null and void.

XIII.

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Upon information and belief that by reason of various paper writings thereafter made, the Insurance Commissioner did attempt to make transfer of the said assets but that said purported transfer of said assets was wholly null and void and that the title to all of said assets remains in the said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California in his capacity as the conservator of the Pacific Mutual Life Insurance Company of California.

As a further, fifth and separate defense, these interveners allege:

XIV.

That the said agreement entered into and the transfer of assets contemplated thereby is entirely void upon the following grounds:

2338 (1) That the said contract and the transfer of assets made pursuant thereto are wholly null and void.

(2) That the court had no power and has no power to authorize the making of said contract or to authorize the organization of the new company as provided therein.

(3) That under the Insurance Code and under the statutes of the state of California the Insurance Commissioner has no power to invest the assets of an insolvent insurance company in the stock of a new insurance company, and the court has no power to authorize him to do so.

— (4) That the Insurance Commissioner has no power under the statute or otherwise to prefer one class of policy holders over another class of policy holders under the guise of reinsurance of certain class of risks.

2340 (5) That the court is without power to authorize the Insurance Commissioner to prefer one class of policy holders over another class of policy holders under the guise of reinsurance of certain classes of risks.

(6) That the court has no power to prefer holders of life insurance policies in the Pacific Mutual Life Insurance Company of California over the holders of non-cancellable income policies in the same company.

(7) That the Insurance Commissioner as liquidator is without power to enter into a con-

2341 tract of reinsurance which prefers one class of risks over another.

(8) That the company being insolvent the Insurance Commissioner is without power to part with the assets securing the contracts of insurance of the company without reinsuring risks covered thereby, and cannot reinsure only part of the risks.

(9) That the making of any orders ratifying or confirming the contract referred<sup>e</sup> to would be 2342 unjust, unconscionable and inequitable.

(10) That this court of equity is lending its aid to prefer one class of creditors over another class of creditors.

(11) That it is an abuse of discretion for the Insurance Commissioner to transfer the assets of an insolvent insurance company to a new company and entrust the management of the affairs of the new company to a board of directors of his selection and to the same management that 2343 led the company into its insolvency and this is entirely beyond the authority bestowed upon him by statute.

(12) That the effect of the said contract and transfer of assets violates section 10, article I of the Constitution of the United States.

(13). That there being a complete mingling of reserves for non-cancellable income policies and for life insurance policies in the old company, that the attempt by the Insurance Com-



2344 missioner to apply the assets of the old company in his possession as conservator for the benefit of one class of creditors is wholly unauthorized, null and void.

Wherefore, interveners ask that the application for an order to liquidate and the application for a ratification of the said so-called rehabilitation, sale and transfer of assets and re-insurance plan and agreement and all orders prayed for in the said order to show cause and 2345 restraining order dated August 13, 1936 be denied and that the Insurance Commissioner be directed by the court to take such steps as will cause all the assets hertofore transferred to the new company to be returned to him as Insurance Commissioner.

H. S. DOTTENHEIM,

Attorney for Interveners, Marshall D. Hall and Joseph C. McManus, and for all holders of non-cancellable income policies not otherwise represented.

2346

Verified.

Received copy of the within document. Aug. 24, 1936. O'Melveny, Tuller & Myers, By M. A. T. (Invalid unless countersigned)

Received copy of the within answer of intervenors this 24th day of August, 1936. U. S. Webb, atty. general, John L. Flynn, deputy E. C.

Filed Aug. 24, 1936, 12:31 p. m. L. E. Lamp-ton, county clerk; by C. H. Holdredge, deputy.

**2347** In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of California; petitioner, vs. Pacific Mutual Life Insurance Company of California, a corporation, respondent, Ralph R. Huesman, also known as Raphael Robert Huesman, and Broadtown Investment Company, a corporation, Intervenor. No. 404-673.

**2348** **Complaint in Intervention of Ralph R. Huesman and Broadtown Investment Company, a Corporation.**

Come now Ralph R. Huesman, also known as Raphael Robert Huesman, and Broadtown Investment Company, a corporation, and, by leave of court file this their complaint in intervention herein and for cause of action and intervention

**2349** allege:

I.

That, at all times herein mentioned, the intervenor Ralph R. Huesman was and is the owner and holder of the following described policies of insurance issued by the respondent, Pacific Mutual Life Insurance Company of California, a corporation, to-wit:

2350	Policy No.	Date	Amount	Kind
	4793463	3/31/1933	Acct. Death \$20,000.	Pacific Leader
			Weekly indemnity \$200.	Accident
	261430	10/1/1912	\$1,000.00 Paid up	20 year Life
	2668332	12/31/1919	\$200. Mo.	Non-cancellable income, form A-232-Z
	2659270	11/21/1919	\$300. Mo.	Non-cancellable income, form A-233
	2646822	11/17/1919	Acct. Death \$10,000	Life & Limb ac- cident
2351	322932	9/1/1917	\$6,000.	20 yr. endowment
	322933	9/1/1917	\$2,000.	20 yr. endowment
	361474	7/25/1919	\$5,000.	20 yr. endowment
	362420	7/25/1919	\$5,000.	20 yr. endowment
	493928	4/24/1923	\$20,000.	32 yr. endowment
	557508	4/24/1924	\$1,000.	Ordinary life.

## II.

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That at all times herein mentioned the inter-  
venor Broadtown Investment Company was and  
now is a corporation duly organized and existing  
under and by virtue of the laws of the state of  
California with its principal place of business in  
the city of Los Angeles, state of California, and  
that at all of said times was and now is the  
owner and holder of the following described  
policies of insurance issued by said respondent,  
Pacific Mutual Life Insurance Company of Cali-  
fornia, a corporation, to-wit:

2353	Policy No.	Date	Amount	Kind
	411971	11/6/1920	\$25,000.	Ordinary life
	493930	4/24/1923	25,000.	" "
	569580	11/6/1924	25,000.	" "
	771178	9/22/1930	50,000.	" "
	771179	9/22/1930	50,000.	" "

### III.

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That at all times the Pacific Mutual Life Insurance Company of California was and is a corporation organized under the laws of the state of California and has had and still has its principal place of business in the city of Los Angeles, county of Los Angeles, California. That, for the purpose of brevity, said corporation is hereinafter referred to as the "Old Company."

### IV.

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That at all times herein mentioned, Pacific Mutual Life Insurance Company was and is a corporation incorporated under the laws of the State of California with its principal place of business in Los Angeles, county of Los Angeles, California, and, for the purpose of brevity, this corporation is referred to as the "New Company."

### V.

That Samuel L. Carpenter, Jr. is the duly appointed, qualified and acting Insurance Commissioner of the state of California.

### VI.

That on or about August 13, 1936, the Insurance Commissioner of the state of California

2356 filed in this court an application for an order appointing him conservator of said Old Company; that, under date of August 11, 1936, an order of the above court was made and entered, under and by virtue of the terms of which said petitioner was appointed conservator of said Old Company and of its business, assets and affairs and that said petitioner was ordered to take possession forthwith of all books, records, property and assets of said Old Company and, as  
2357 conservator, directed to formulate and prepare a rehabilitation and/or reinsurance plan or agreement concerning said Old Company to protect its policyholders, creditors, stockholders and the public in general.

That, on or about August 13, 1936, the said Insurance Commissioner filed in this court his application for an order to liquidate the assets and business of said Old Company and, on or about the 14th day of August, 1936, a petition  
2358 was filed asking for an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and a reinsurance plan and agreement of said Old Company and thereafter and on the same day an order to show cause with respect to rehabilitation, sale and transfer of assets and reinsurance plan and agreement was issued by the above court setting a time and place for all persons interested or claiming to be interested in said proceeding either as policyholders, creditors or stockholders of said re-

2359 spondent corporation, to appear and show cause why the above entitled court should not make its orders, among others, approving the plan and agreement and rehabilitation, sale and transfer of assets and reinsurance as set forth in said petition heretofore referred to, authorizing said Insurance Commissioner and respondent to execute an agreement as of July 22, 1936, ratifying the transfer of the assets of said Old Company and other orders to carry out the purpose and  
2360 plan of said Insurance Commissioner and said respondent theretofore instituted under certain orders made and entered herein by Judge Douglas L. Edmunds, judge of the above court.

#### VII.

That no notice of any of said matters was given to these intervenors and there was no impartial or independent appraisal or investigation into the affairs of said Old Company made by the court previous to the making of the orders heretofore entered herein by said Judge Douglas  
2361 L. Edmunds.

#### VIII.

That intervenors are informed and believe that the Old Company was not insolvent and allege that said sale and transfer is not for the best interests of all concerned, and allege on information and belief that a much better sale can be made even if the Old Company is distressed financially; that said plan is unfair and inequitable, is in disregard of the rights of the inter-



2362 venors, would jeopardize the holdings of assets by the New Company as security for the payment of the policies of insurance of intervenors; that article XIV, chapter 1, part 2 of the Insurance Code is void and that it permits and authorizes proceedings that deprive intervenors of their property without due process of law.

IX.

That all of the orders heretofore made in this  
2363 cause are against the best interests of said Old Company and its policyholders. Intervenor allege upon information and belief that said rehabilitation, sale and transfer plan of said Old Company with said New Company is not the best practice plan for the protection of the policyholders of the Old Company as was represented by petitioner in his said application for said sale, but intervenors allege upon information and be-  
2364 lief that it is for the special benefit of certain stockholders of the Old Company and not for the interests of the policyholders of the same. Intervenor allege that under said plan the protection and value of their policies of insurance, together with that of all other policies of insurance issued by the old company will be greatly lessened and impaired. That intervenors allege upon information and belief that the assets of

2365 said Old Company may be sold to interested parties without any loss of any of the rights of any of the stockholders herein interested. Intervenor's allege upon information and belief that, if this matter be fully advertised and the assets placed on sale to the highest and best bidder, the interests of intervenors and other policyholders similarly situated will be more fully and adequately protected.

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X.

That the policies held by intervenors have been issued and in force since the dates hereinbefore shown and that each and every of the premiums thereon have been paid from that time until the present time:

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Wherefore, the intervenors pray judgment as follows: That the petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and the Pacific Mutual Life Insurance Company of California, a corporation, for the appointment of said Samuel L. Carpenter, Jr., as liquidator and for rehabilitation and sale of the assets, be denied; that the ratification, approval and confirmation of the orders and proceedings heretofore taken herein, as referred to in the order to show cause heretofore issued

2368 herein and set for hearing on the 20th day of August, 1936, be denied; that the matter be held in abeyance either in the hands of the present conservator or in the hands of one to be selected by the court; that a general scheme of financial responsibility be set up preliminary to any bidder making a bid to take over the respondent company and that a feasible plan be first worked out to save and protect the rights of all the parties  
2369 concerned and for whatever other relief this court may deem proper.

NEIL S. McCARTHY,

By NEIL S. McCARTHY,

*Attorney for Intervenors.*

Verified.

Endorsed: Received copy of the within document Aug. 26, 1936. O'Melveny, Tuller & Myers, by (invalid unless countersigned) Mat.

2370 Received copy of the within complaint this 26 day of Aug. 1936. U. S. Webb, attorney general, John L. Flynn, deputy, M. Attorneys for petitioner.

Filed Aug. 26, 1936, 3:45 p. m. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

2371 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404,673.

Response of George I. Cochran, W. H. Davis,  
2372 Douglas E. C. Moore and Stanley M. McClung to Order to Show Cause and Restraining Order Made in the Above Entitled Matter on August 13, 1936.

Come now George I. Cochran, W. H. Davis, Douglas E. C. Moore and Stanley M. McClung, and responding to the above entitled order to show cause, respectfully represent and state to the court:

I.

2373 That each of the undersigned is now, and continuously ~~from~~ a long time prior to the 22nd day of July, 1936, has been, a stockholder of the above named respondent, and also through all of said times is and has been the holder of a policy of life insurance issued by said respondent.

II.

That the order dated July 22, 1936, made by the Honorable Douglas L. Edmonds, appointing Samuel L. Carpenter, Jr., Insurance Commissioner of the state of California, as conservator of said respondent, is the same order referred to

2374 in the response of the undersigned to the order of the above entitled court dated August 13, 1936, to show cause why order to liquidate said respondent should not be made. Affiant hereby refers to and makes a part hereof, to the same extent as if here set forth in full, the allegations of said last mentioned response.

### III.

That the order appointing said Insurance Commissioner liquidator of said respondent made on 2375 said 22nd day of July, 1936, and referred to in the order to show cause hereby replied to, was, by the above entitled court on Friday, the 21st day of August, 1936, set aside and vacated, and the same was at the time of the making thereof, and is now, and ever since said 22nd day of July, 1936, has been, wholly void and of no effect.

### IV.

That the order authorizing said petitioner as liquidator to enter into a rehabilitation, sale and 2376 transfer of assets and reinsurance agreement, referred to in the order to show cause, to which this is a reply, was on the 21st day of August, 1936, found and declared by this court to be void and of no effect and was set aside and vacated. That said order was at the time of the making thereof, ever since has been, and still is, void and of no effect.

### V.

That by reason of the order of the above entitled court made on August 21, 1936, as afore-

2377 said, declaring said "order of liquidation" made by the Honorable Douglas L. Edmonds on July 22, 1936, void and declaring the same to have been beyond the power and without the jurisdiction of said Douglas L. Edmonds as judge of the above entitled court to make the same, there is nothing in or about said so-called order of liquidation to be ratified or approved or confirmed or adopted or continued in force.

VI.

2378 That by the provision of section 1019 of the Insurance Code of the state of California, it is declared that

"upon the issuance of an order of liquidation

\* \* \* the rights and liabilities of any such person (insurance company) and all creditors, policyholders, shareholders and members and all other persons interested in its assets shall, unless otherwise directed by the court, be fixed as of the date of the delivery of the order in the office of

2379 the clerk in the county wherein the application was made";

that no order of liquidation has been made in the above entitled matter, and hence no time has been fixed as of which either the rights or liabilities of the respondent or any creditor, policy-holder, shareholder or other person interested in respondent or its assets can be fixed or determined.

VII.

That there has been and is no order of liquidation of said respondent in the above entitled mat-



2380 ter, or at all, and no order appointing said Samuel L. Carpenter, Jr., Insurance Commissioner, or any other person as liquidator of all or any of the assets and/or business of said respondent.

### VIII.

That said petitioner has not, and has never had, as liquidator of said respondent, any right, title or interest in or to any of the property or assets of said respondent.

2381

### IX.

That said petitioner is not, and never has been, liquidator of said respondent. This court is without power or authority, unless and until an order of liquidation and an order appointing liquidator is made herein, to direct said petitioner to wind up or liquidate the business of said respondent or to formulate, prepare or submit any plan or agreement either of rehabilitation or reinsurance relating to the affairs of said respondent.

2382

That unless and until an order to liquidate the business of said respondent, it is neither necessary nor proper to direct said petitioner or any other person to publish or otherwise give notice to policyholders, creditors or shareholders or any other persons interested in the assets of said respondent to file claims with said petitioner as liquidator or otherwise.

2383 Wherefore, the undersigned pray:

1. That the order of liquidation made July 22, 1936, be not ratified, approved or confirmed or adopted or continued in force;

2. That no order be made fixing July 22, 1936, at the hour of 1:00 o'clock P. M. Pacific Standard Time, or any other time; as the date and time as of which the rights or liabilities of respondent or of its creditors, policyholders, shareholders or members or of any other persons interested in its affairs be fixed;

3. That neither Samuel L. Carpenter, Jr., Insurance Commissioner, or any other person, be appointed liquidator or all or any of the assets or business of respondent;

4. That no right, title or interest whatsoever in or to the assets of respondent corporation, or any thereof, be confirmed in said petitioner as liquidator of respondent;

2385 5. That petitioner be not directed either as liquidator or otherwise to wind up or liquidate respondent's business;

6. That no injunction or restraint of any sort be declared or continued in force for the benefit of petitioner as liquidator of respondent;

7. That petitioner be not directed to publish any notice to any person or persons whomsoever directing them or any of them to file claims with said petitioner as liquidator;

2386 8. That this court order, adjudicate, and declare the order of liquidation, the order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement, each of which was made on July 22, 1936, and the order approving amendment of rehabilitation, sale and transfer of assets and reinsurance agreement, made on July 23, 1936, to have been heretofore and on the 21st day of August, 1936, declared to be void and of no effect and vacated and set aside;

2387 9. For such other and further order as may be meet in the premises.

OSCAR LAWLER &

HAROLD JUDSON,

*Attorneys for George I. Cochran, W. H. Davis,  
Douglas E. C. Moore and Stanley M. McClung.*

Verified.

2388 Endorsed: Received copy 8/26/36 John L. Flynn.

Received copy of the within this 26 day of August, 1936. O'Melveny, Tuller & Myers, W. B. Carman, Jr., attorney for Pacific Mutual Life Ins. Co.

4 Filed Aug. 26, 1936. L. E. Lampton, county clerk; by A. G. Stanham, deputy D. 11.

2389 [TITLE OF COURT AND CAUSE.]

Response of George I. Cochran, W. H. Davis, Douglas E. C. Moore, and Stanley M. McClung to "Petition With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement" and the Order to Show Cause With Respect Thereto.

Come now George I. Cochran, W. H. Davis, Douglas E. C. Moore and Stanley M. McClung, 2390 and responding to the "Petition with respect to rehabilitation, sale and transfer of assets and reinsurance plan and agreement," filed by the above named petitioner on August 14, 1936, and the order to show cause with respect thereto, issued on the same date, and respectfully represent and show to the court:

I.

That each of the undersigned is now, and continuously since a long time prior to the 22nd day 2391 of July, 1936, has been, a stockholder of said respondent.

II.

That each of the undersigned is now, and continuously since a long time prior to July, 1936, has been, the holder of a policy of life insurance issued by said respondent.

III.

That the order appointing liquidator on the petition to which this is a response was on the 21st day of August, 1936, found and declared by

2392 the above entitled court to have been beyond the power and authority of Honorable Douglas L. Edmonds, the judge who made the same, and to have been void from the beginning. That said last mentioned finding and adjudication is in full force and effect.

#### IV.

2393 The undersigned respectfully allege that the plan and agreement referred to in paragraph IV of said petition does not preserve the value of the assets of said respondent for the benefit of its creditors or policyholders, for the following reasons, among others:

(a) It contemplates and requires the turning over of practically all of the assets of said respondent to a new corporation and excludes a large number of the policyholders and creditors of respondent from any participation or opportunity to participate therein or in the proceeds thereof;

2394 (b) Said plan and agreement exclude stockholders of said respondent from any participation or opportunity to participate in the property of respondent or any thereof.

#### V.

Said plan and agreement does not, either as far as possible or at all, protect the legal rights of all or any interested parties in the assets of said respondent, because

(a) It assumes that neither stockholders, creditors nor any policyholders other than so-

2395 called participating policyholders have any right or interest in or to the major portion of the property and assets of said respondent and individuals and discriminates in favor of certain of the persons interested in the property of said respondent and against other persons so interested, there having been no decree or order of court or other adjudication authorizing or warranting any such priority, preference or discrimination.

VI.

2396 Said plan and agreement does not afford the or any opportunity to policyholders to maintain, in so far as may be possible or otherwise, the continuity of their insurance policies because

It excludes non-cancellable policyholders from the opportunity to continue their insurance policies.

VII.

2397 Said plan and agreement does not enable the established business created by respondent to be protected or maintained either as a going concern or otherwise, because

It contemplates and authorizes the destruction of the business created and carried on by respondent and the substitution therefor of a mutual insurance plan under and by which the existing rights of life insurance policyholders and non-cancellable insurance policyholders shall be materially modified and impaired without their consent.



## VIII.

2398 That the order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement referred to in paragraph V of said petition was, on the 21st day of August, 1936, adjudged by the above entitled court to have been void from its inception and to be of no force and effect, and the same is true as to the order in said paragraph referred to made on the 23rd day of July, 1936, 2399 entitled "Order approving amendment of rehabilitation, sale and transfer of assets and reinsurance plan and agreement."

## IX.

That the organization of said Pacific Mutual Life Insurance Company, "the new company," referred to in said plan and agreement, was pursuant to said plan and agreement; which has not been approved by any order of court, and that any transfer of funds, properties or assets which,

2400 pursuant to said plan and agreement, were to be transferred to said new corporation were and are without the authority or approval of this court, and were and are, and each of them is, void and of no effect, and in violation and derogation of the rights of policyholders, creditors, stockholders and all other persons interested therein.

## X.

That the undersigned are informed and believe, and therefore state the fact to be, that the authorities of the thirty-three or more states of the United States by whom certificates of au-

2401 thority have been issued as alleged in paragraph VII of said petition were not at the time of the issuance of said certificates or any thereof, and have not been, and are not now, informed of the invalidity of said orders made by this court on July 22 and July 23, 1936, as aforesaid, or of the order of this court made on August 21, 1936, that said former orders were and are void.

XI.

2402 That, as the undersigned are informed and believe and therefore state the fact to be, said plan and agreement will not preserve the value of the assets of said respondent or its agency organization or its good will or its intangible or non-statement assets, or any thereof; upon the same grounds, allege that said plan and agreement are not, and will not be, fair or equitable to policyholders, creditors or stockholders of respondent, and the same and said provisions for mutualization will exclude present non-cancellable  
2403 policyholders and stockholders from any participation or the right to participate in any of the assets of said respondent, notwithstanding said assets may be greatly in excess of what is necessary to meet and satisfy all of the requirements of said mutualized company.

Wherefore, the undersigned respectfully pray

1. That said order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement, made July 22, 1936, and the order approving amend-

**2404** ment of rehabilitation, sale and transfer of assets and reinsurance agreement, made July 23, 1936, be not ratified, approved or confirmed or continued in force, but, on the contrary, that it be ordered and adjudged that said orders are, and each thereof is, and has been from the time of the making thereof, void and of no effect;

2. That the plan and agreement of rehabilitation, sale and transfer of assets set forth as Exhibit "A" to said petition, be declared unfair  
**2405** and inequitable to respondent and the parties interested in respondent;

3. That petitioner be not authorized to enter into said agreement with said Pacific Mutual Life Insurance Company either as of July 22, 1936, or as of any other date;

4. That the transfer of assets owned by respondent to said Pacific Mutual Life Insurance Company be not ratified or approved or confirmed, but, on the contrary, that the same be  
**2406** held to have been without authority and void;

5. That petitioner be not authorized or directed to execute such or any documents as may to him seem necessary or desirable for the purpose of confirming title in said Pacific Mutual Life Insurance Company to any of the assets of respondent or for the purpose of carrying out either the intents or purposes of said plan and agreement;

6. That the officers, directors, agents and employees of respondent be not directed to cooperate with petitioner and said Pacific Mutual

2407 Life Insurance in the effectuation of said plan either by the execution of documents or otherwise;

7. That the terms and conditions upon which it is proposed, pursuant to said plan and agreement and the amendment thereof, to issue and exchange securities be not approved;

2408 8. That it be ordered and adjudged that the orders heretofore made by said Honorable Douglas L. Edmonds on the 22nd day of July, 1936, to liquidate and appoint a liquidator of respondent, and the order approving plan and agreement hereinabove referred to, are, and each of said orders is, and was from the time of the making thereof, void and of no effect;

9. For such other and further order as may be meet in the premises.

OSCAR LAWLER &

HAROLD JUDSON,

*Attorneys for George I. Cochran, W. H. Davis,*

2409 *Douglas E. C. Moore and Stanley M. McClung.*

Verified.

Endorsed: Received copy 8/26/36. John L. Flynn.

Received copy of the within this 26th day of August, 1936. O'Melveny, Tuller & Myers, by W. B. Carman, Jr., attorneys for Pacific Mutual Life Ins. Co.

Filed Aug. 26, 1936. L. E. Lampton, county clerk; by A. G. Stanham, deputy. D. 11.

**2410** In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent; Pacific Mutual Life Insurance Company, a corporation, intervener. No. 404-673.

**Response of Wilbur A. Beckett, Wilbur A.**

**2411**

**Beckett as Executor of the Last Will and Testament of Wesley W. Beckett, Deceased, Citizens National Trust and Savings Bank of Los Angeles, a National Banking Association, as Trustee of Its Private Trust No. 7434 for the Benefit of Francis H. Beckett, Citizens National Trust and Savings Bank of Los Angeles, a National Banking Association, as Trustee of the Trust Created Pursuant to the Provisions of the Last Will and Testament of Iowa A. Beckett, Deceased, for**

**2412**

**the Benefit of Suzann Beckett, a Minor, and A. J. Beckett to Petition for Intervention and for Order to Show Cause of Pacific Mutual Life Insurance Company, a Corporation, Intervener, and Order to Show Cause Issued by Honorable Douglas L. Edmonds in the Above Entitled Matter on July 23, 1936, Application for Order to Liquidate and Order to Show Cause and Restraining Order Dated August 13, 1936, and Petition With Respect**

**2413 to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, and Order to Show Cause With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement Dated August 14, 1936.**

Come now Wilbur A. Beckett, Wilbur A. Beckett as executor of the last will and testament of Wesley W. Beckett, deceased; Citizens National Trust and Savings Bank of Los Angeles, **2414** a national banking association, as trustee of its private Trust No. 7434 for the benefit of Francis H. Beckett; Citizens National Trust and Savings Bank of Los Angeles, a national banking association, as trustee of the trust created pursuant to the provisions of the last will and testament of Iowa A. Beckett, deceased, for the benefit of Suzann Beckett, a minor, and A. J. Beckett, and in response to the foregoing petitions, applications, orders to show cause and restraining orders **2415** respectfully represent and allege:

I.

That the undersigned adopt and reallege all of their allegations contained in their petition in intervention herein filed with the above entitled court on August 19, 1936, the same as though fully herein again set forth.

II.

That the undersigned Wilbur A. Beckett, for many years last past, has been and now is the holder and owner of a policy of life insurance



2416 issued by said respondent, which policy of life insurance has been throughout said time and now is in full force and effect.

### III.

That each of the undersigned is one of the persons interested in this proceeding, described and referred to in paragraph V of said petition for intervention dated July 22, 1936.

### IV.

2417 That the undersigned are informed and believe and therefore allege that prior to the 22nd day of July, 1936, the said president, vice-president and general counsel of respondent and other persons whose names are to the undersigned unknown, in cooperation with said commissioner, caused to be prepared all, each and every of the applications, petitions and orders referred to in the petition of Pacific Mutual Life Insurance Company for intervention and the plan and agreement referred to in said petition together  
2418 with the form for conveyance from said petitioner to said intervener referred to in said petition for intervention.

### V.

That the preparation of each and all of the papers aforesaid was secret and without the knowledge of the undersigned or either of them, and, as the undersigned are informed and believe and therefore state the fact to be, without the knowledge of a majority of the directors of

2419

VI.

That on said 22nd day of July, 1936, all, each and every of the applications, petitions and orders (except the petition and order dated July 23, 1936), together with said plan and agreement; were practically simultaneously presented and submitted to Honorable Douglas L. Edmonds, judge of the above entitled court, in the above entitled matter, and each, every and all of said orders, except said order dated July 23, 1936, were at said time signed by said Honorable Douglas L. Edmonds, judge as aforesaid.

VII.

That said Asa V. Call was, on said 22nd day of July, 1936, and for a long time prior thereto had been, attorney for said respondent, and at said time was, and on and continuously since said July 22, 1936, has been, and is now, the attorney also for said intervener.

VIII.

2421

That reference is hereby made to the various petitions, applications, plan and agreement referred to in said petition for intervention and on file in the above entitled matter, for further particulars.

IX.

That on said 22nd day of July, 1936, and for a long time prior thereto, said Honorable Douglas L. Edmonds was, and he still is, the holder of a life insurance policy issued by respondent, which

2422 policy was throughout all of said times and is in full force and effect, and said Honorable Douglas L. Edmonds was and is one of the persons financially interested in this proceeding and in the affairs of said respondent, described in paragraph V of said petition in intervention and in paragraph 3 of said order to show cause.

That by reason of his said interest in this proceeding, as aforesaid, said Douglas L. Edmonds was not on said 22nd day of July, 1936, or at any 2423 time thereafter, and is not now, qualified to sit or act in the above entitled proceeding, and was and is forbidden by section 170 of the Code of Civil Procedure of the state of California to sit or act therein.

X.

That said Honorable Douglas L. Edmonds has heretofore filed in the above entitled proceeding statement and declaration and caused a memorandum thereof to be entered in the minutes of 2424 the above entitled court of his interest in said proceeding and in said respondent, as aforesaid.

XI.

That said Honorable Douglas L. Edmonds is not, and was not at the time of making either or any of the orders referred to in said petition for intervention, qualified to sit or act as judge in the above entitled matter, and that all, each and every of the orders made and signed by him as such judge in the above entitled matter was and is null, void and of no effect.

2425

XII.

Upon such information as was in possession of responding parties, they believe that respondent company was not insolvent nor in such a condition that its further transaction of business would or will be hazardous to its policy holders, creditors, or the public; and upon such information and belief deny the allegations in paragraph IV of said application for order appointing conservator.

2426

XIII.

That, as the undersigned are informed and believe and therefore state the fact to be, an interval of time of only a few moments elapsed between the making of said order appointing conservator of said respondent insurance company above referred to and the time of the making of said order for liquidation by said Honorable Douglas L. Edmonds, as aforesaid; that nothing was done by said conservator and no business

2427

was carried on by him as such prior to the making of said order for liquidation and no investigation was made by said petitioner for the purpose of ascertaining whether efforts to proceed under and pursuant to said order appointing conservator, as aforesaid, would be futile, and said petitioner, without any such investigation, forthwith applied for said order to liquidate and wind up the business of said respondent insurance company; that no full or other hearing whatsoever was had upon the application of said peti-

2428 tioner for order to liquidate, nor was any policy  
holder or stockholder of said insurance company  
notified thereof; on the contrary, said order was  
made without any effort by said petitioner to  
proceed as such conservator pursuant to the pro-  
visions of section 1011 of the Insurance Code of  
the state of California, or otherwise, or to ascer-  
tain or determine whether efforts to proceed  
under said section would be futile.

2429

#### XIV.

That all insurance policies and business, except  
so-called non-cancellable contracts of insurance,  
and all of the property and assets of said re-  
spondent, with certain minor exceptions, have  
been by said petitioner turned over and delivered  
to said corporation known as and called "Pacific  
Mutual Life Insurance Company," and petitioner  
has thereby rendered himself incapable of carry-  
2430 ing out and administering the trusts imposed  
upon him as Insurance Commissioner of the State  
of California.

#### XV.

The undersigned respectfully represent and  
show that the agreement under and pursuant to  
which said assets were turned over and delivered  
to said Pacific Mutual Life Insurance Company,

2431 and the plan of which said agreement was and is a part, are unfair and inequitable, and in their operation have the effect of depriving and will deprive each holder of a life insurance policy issued by said respondent, and each stockholder of said respondent of property without due process of law, and deny to each such policy holder and each such stockholder the equal protection of the law, in the following particulars:

2432 Said petitioner is, by section 1057 of the Insurance Code of the state of California, "Trustee for the benefit of all creditors and all other persons interested in the estate of" said respondent insurance company.

That each and every policy holder is, and all other persons interested as creditors, stockholders or otherwise in said respondent are, interested and concerned in the integrity and maintenance of its property and assets and the general and equal availability thereof to the payment and satisfaction of all claims against said respondent.

2433 That each and every stockholder of said corporation is interested in the property of said respondent insurance company remaining after the satisfaction of the claims of its creditors and policy holders.



2434

XVI.

That the life insurance policies issued by said respondent, referred to in paragraph V of said petition for intervention, are, as the undersigned are informed and believe and therefore state the fact to be, of the intrinsic value of upwards of fifteen dollars (\$15.00) per thousand dollars (\$1,000.00) of such life insurance, and that the total value of said insurance policies is many

2435 millions of dollars;

That no consideration whatever has been paid or is intended to be paid by said intervener for said insurance policies under and pursuant to the plan and agreement referred to in said petition for intervention, and neither said respondent nor any creditor or stockholder of said respondent will derive any benefit whatever from the value of said insurance policies.

2436

XVII.

That in and by said plan and agreement all of the property and assets belonging to said respondent and all consideration received by said petitioner for said property and assets are, and have been, so disposed of as to render the same and the whole thereof unavailable to either said respondent company or to policy holders, stockholders or any other persons interested therein.

2437

XVIII.

That ~~in and by~~ said plan and agreement and the conduct of the petitioner pursuant thereto, all of the assets of respondent have been disposed of at a valuation fixed as of December 1, 1935, which valuation is grossly and materially less than the value of said property and assets on the 22nd day of July, 1936, and does not include any value for the good will or agency structure of  
2438 said respondent insurance company; that said good will and agency structure are assets of great value.

XIX.

That by said orders referred to in said petition for intervention and the operation thereof said respondent and all creditors, policy holders, stockholders and other persons interested in said respondent and in the trusts under and pursuant to  
2439 which said petitioner was acting, have been without notice or hearing or any opportunity for notice or hearing whatever deprived of their property without due or any process of law whatever.

XX.

That in and by said orders and the things done by said petitioner thereunder, the contracts of holders of all insurance policies issued by said

2440 respondent are modified and impaired without the consent of the parties to said contracts and policies and without any notice or hearing or opportunity to be heard with reference thereto.

XXI.

That the holders of so-called non-participating policies of insurance issued by respondent have been by said orders and the acts of said petitioner thereunder deprived of access to or the availability of any of the property and assets of said respondent conveyed and delivered by petitioner to said intervener, and deprived of access to or the availability of any consideration received by said petitioner or agreed to be paid by said intervener for said property and assets, for the payment or satisfaction of the claim of any such non-cancellable policy holder against said respondent or against said petitioner.

XXII.

That the transfer of property and assets of said respondent to said intervener by said petitioner includes "cash and securities" deposited "by said respondent with any governmental authority as a condition to the conduct of its business"; that said cash and securities so deposited by respondent includes large sums of money and securities of great value, amounting in all to

2443 several millions of dollars, all of which has been turned over to said intervener without consideration, and of which the persons for whom said petitioner is trustee and particularly the holders of non-cancellable policies and stockholders of respondent have been deprived by said conveyance, and will continue to be deprived if the latter is maintained in effect.

XXIII.

2444 That under and pursuant to said plan and agreement non-cancellable policy holders and stockholders of respondent will be deprived of all right to the three million dollars paid by petitioner to said intervener, to the property or any thereof turned over by said petitioner to said intervener, or to the stock of intervener delivered to said petitioner.

XXIV.

2445 That said orders and the acts and agreements of petitioner and intervener responsive and pursuant thereto are inequitable, unfair and confiscatory of the property of policy holders and stockholders of said respondent, and deprive each such stockholder and each such policy holder of his, her or its property without due or any process whatever, and impair the obligations of the respective contracts of each such stockholder and policy holder, in violation of the Constitution of the United States and the Constitution of the

**2446** state of California, and deny to the holders of non-cancellable policies issued by said respondent and stockholders of said respondent the equal protection of the law.

Wherefore, these respondents respectfully pray as follows:

**2447** 1. For an order cancelling, vacating, setting aside and holding for naught each, every and all of the orders made by said Honorable Douglas L. Edmonds in this proceeding, and any and all things done pursuant to said orders and each thereof;

2. For an order directing and commanding said intervener to return to said petitioner said three million dollars (\$3,000,000) in cash and to return and reconvey to said petitioner all property and assets of every kind, character and description transferred to said intervener by said petitioner;

**2448** 3. For an order directing said petitioner to investigate and report to this court the facts concerning the present value of all assets and property of respondent on July 22, 1936, and the value of all outstanding life insurance policies and business of said respondent, including the good will and agency structure of said respondent, and the amount and present value of all of the deposits of money and/or securities made by said respondent with insurance authorities in the various states and other governments within

2449 whose jurisdiction said respondent carried on and transacted life and other insurance business, and as to the availability of said cash and other securities so deposited *and as to the availability of said cash and other securities so deposited* for the benefit of the trusts of which said petitioner is trustee;

4. For an order directing said petitioner to call for propositions and plans to be submitted to this court for protecting all of the holders of 2450 policies of insurance of every kind issued by said respondent and all claimants and all creditors and stockholders of said respondent, and all other persons interested in said trust;

5. That the prayer of said petition in intervention be denied;

6. That a hearing be had as to whether the ground for order appointing conservator and restraining order existed or now exists, and that said order appointing conservator and restraining 2451 order made July 22, 1936, be discontinued, and that respondent be authorized and directed to resume title and possession of property and the conduct of its business;

7. For such other and further order as may be meet in the premises and protect the interests of all parties concerned herein.

WILBUR A. BECKETT,

WILBUR A. BECKETT

as Executor of the Last Will and Testament of  
Wesley W. Beckett, deceased;



2452

CITIZENS NATIONAL TRUST AND  
SAVINGS BANK OF LOS ANGELES,  
a national banking association, as Trustee of its  
private Trust No. 7434 for the benefit of  
Francis H. Beckett;

2453

CITIZENS NATIONAL TRUST AND  
SAVINGS BANK OF LOS ANGELES,  
a national banking association, as Trustee of the  
trust created pursuant to the provisions of  
the Last Will and Testament of Iowa A.  
Beckett, deceased, for the benefit of Suzann  
Beckett, a minor, and A. J. Beckett,

By WILBUR A. BECKETT,

*Responding Parties.*

SHATTUCK, DAVIS & STORY,

By KARL LYNN DAVIS,

*Attorneys for Responding Parties.*

Verified.

2454

Endorsed: Received copy of the within this  
26 day of August, 1936. Asa V. Call, F. Mc.,  
attorney for respondent.

Received copy of the within this 26 day of  
August, 1936. .... attorney for inter-  
vener. U. S. Webb, attorney general; John L.  
Flynn, deputy, M.

Filed Aug. 26, 1936, 3:58 p. m. L. E. Lamp-  
ton, county clerk; by C. H. Holdredge, deputy.

2455 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, plaintiff, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent, Pacific Mutual Life Insurance Company, a corporation, intervener, The Pacific Mutual Agency Association, a voluntary mutual non-stock organization, intervener. No. 404673.

2456

### Complaint in Intervention.

Leave of court first being had and obtained, The Pacific Mutual Agency Association, a voluntary mutual non-stock organization, intervener herein, files this its complaint in intervention, alleging as follows:

#### I.

2457 That at all the times herein mentioned, Samuel L. Carpenter, Jr., is and has been the duly appointed, qualified and acting Insurance Commissioner of the State of California.

#### II.

That at all times herein mentioned, the respondent, The Pacific Mutual Life Insurance Company of California, has been and now is a corporation organized, existing and doing business under and by virtue of the laws of the state of California, with its principal place of business in the city of Los Angeles, in said state;

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38-69



2458 that hereafter in this complaint in intervention  
said corporation may be referred to as "Old  
Company."

### III.

That prior to on or about July 22, 1936, and  
for a period of, to wit, 68 years, said Old Com-  
pany had been continuously engaged, in the state  
of California and elsewhere throughout the  
United States, in the business of issuing and  
selling life insurance, and during a portion of  
2459 that time, to wit, for a period of 50 years, im-  
mediately last past, in the business of issuing  
and selling contracts and policies of health and  
accident insurance; that since on or about Au-  
gust, 1918, said Old Company has been issuing  
and selling non-cancellable contracts and policies  
of health and accident insurance.

### IV.

That on or about July 22, 1936, the intervenor,  
2460 Pacific Mutual Life Insurance Company, a cor-  
poration, was organized under and by virtue of  
the laws of the state of California, with its prin-  
cipal place of business at said city of Los An-  
geles. That hereinafter said corporation is  
sometimes referred to as "New Company." That  
said New Company was organized for the pur-  
pose, among others, of acquiring all or any part  
of the assets of any other corporation authorized  
to transact an insurance business, either from  
such corporation directly or from its conservator,

2461 liquidator or receiver, and in connection with  
such acquisition to reinsure or assume any or  
all of the obligations of such corporation to its  
policyholders or other creditors, and to execute  
such agreements with or in favor of such cor-  
poration, its conservator, liquidator or receiver,  
or its policyholders, creditors or stockholders as  
may be approved by the board of directors of  
said company, and to carry on generally any and  
all other business necessarily or impliedly inci-  
2462 dental thereto.

V.

That the intervenor, The Pacific Mutual  
Agency Association, is a voluntary mutual non-  
stock organization, consisting wholly and en-  
tirely of the membership made up exclusively  
of the general agents and managers of The  
Pacific Mutual Life Insurance Company of Cali-  
fornia, a corporation, respondent herein. That  
intervenor maintains an organization as such and  
2463 operates pursuant to the provisions of a con-  
stitution and by-laws duly and regularly adopted.  
That the organization operates wholly and en-  
tirely for the purpose of maintaining and pro-  
moting the interest of said respondent corpora-  
tion and of the members of intervenor as general  
agents and managers of said respondent corpo-  
ration, as well as for the purpose of promoting  
the interest of sub-agents under contract with  
said members of intervenor, and for no other  
purpose.

VI.

2464

That each of the members of intervenor association is under contract with said respondent company or Old Company. That under and pursuant to the terms and provisions of certain contracts between the members of said intervenor association and said Old Company or respondent corporation, each of the members of intervenor association is entitled to receive and heretofore has received from said Old Company

2465

or respondent corporation commissions in various amounts of money, amounting in many instances to many thousands of dollars annually on various policies of insurance and upon various contracts of insurance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent corporation or Old Company, at the instance of and as the result of the industry, ability and negotiations conducted by said members of said intervenor association

2466

and/or their sub-agents.

VII.

That said members of said intervenor association under the terms of their contracts with said Old Company are and each one of them is entitled to receive, and prior to the 22nd day of July, 1936, had been receiving commissions upon renewals of said contracts or policies of insurance theretofore procured by them as said agents of said Old Company. That the commissions upon



2467 said renewals to which said members of said intervener association are entitled amount annually to a large sum of money, to wit, a sum in excess of \$2,100,000.00. That the amount to which members of said intervener association are entitled annually as commissions upon renewals of non-cancellable policies is a large sum of money, to wit, the sum of \$500,000.00.

VIII.

2468 That heretofore and beginning on or about July 22, 1936, certain proceedings were had and taken in the matters above entitled, consisting in part as follows, to wit:

(a) The petitioner herein, Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, upon petition then and there filed in the matter as above entitled, obtained an order of the above entitled court appointing said petitioner conservator of said respondent corporation, and under the terms of said order vesting title to all the assets of said respondent corporation in said Commissioner in his official capacity as such Commissioner, and directing said Commissioner forthwith to take possession of all the property, real and personal, of all the books and records of said respondent corporation, and as such conservator to conduct the business of said respondent corporation; further, enjoining said respondent corporation, its officers and agents, from transacting any business of said respondent

2470 corporation and/or disposing of any of its properties, and further directing said Insurance Commissioner to conduct, manage and operate the business of respondent corporation pending a final approval of a plan of rehabilitation and further authorizing said Insurance Commissioner to wind up and liquidate the business of respondent corporation.

(b) That on, to wit, July 22, 1936, said Insurance Commissioner filed a petition with respect  
2471 to rehabilitation, sale and transfer of assets and reinsurance plan and agreement, and thereupon said court made and entered its order approving said plan set forth in said petition and directing, among other things, that said Insurance Commissioner proceed forthwith to organize a corporation and to subscribe to the capital stock thereof, applying as consideration therefor the properties and assets of said respondent corporation, and otherwise directing said Commissioner  
2472 to execute an agreement to effect the purposes set forth in said petition with respect to rehabilitation, sale and transfer of assets and reinsurance plan and agreement, and further authorizing and directing said Commissioner to transfer forthwith to a corporation to be organized pursuant to the plan set forth in said petition, all of the assets of said respondent corporation, excepting therefrom claims which respondent corporation may have against officers or employees of respondent corporation, or against any other per-

2473 son, growing out of any wrongful acts or omissions of officers or agents of said respondent corporation, including rights or claims under bonds of fidelity insurance.

—(c) Thereafter, on, to wit, July 23, 1936, said Insurance Commissioner caused to be filed herein a petition for approval of an amendment to said plan for rehabilitation, and thereafter and on said date, to wit, July 23, 1936, said court made and entered its order approving said amendment so proposed.

IX.

2475 That immediately following the entry of the orders hereinbefore referred to, said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, entered into an agreement and executed a written contract with Pacific Mutual Life Insurance Company, intervenor herein, in conformity with the terms and provisions of said order, and pursuant to said orders and agreement all of the assets, save and excepting those specifically excepted by the terms of said order, were transferred and conveyed to and ever since have been and now are in the sole and exclusive custody and control of said Pacific Mutual Life Insurance Company, intervenor herein, and said New Company is now conducting and administering and in complete and exclusive charge of the insurance business maintained and operated by said Old Company prior to said 22nd day of July, 1936.

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X.

That said plan of rehabilitation, sale and transfer of assets and said reinsurance plan and agreement proposed by said Samuel L. Carpenter, Jr., Insurance Commissioner, and approved by order of court, under the terms of which said New Company is now administering the affairs of said Old Company, is inequitable and unfair to the members of intervener, The Pacific Mutual Agency Association, in this: that it disregards 2477 the rights of said members as general agents and managers of said respondent corporation, in this particular, namely, in failing to provide in paragraph 14 of said rehabilitation, sale and transfer of assets and reinsurance agreement for a preservation of the rights of the members of said intervener association as general agents and managers of said respondent corporation, in the assets and business of said respondent corporation, and in disregarding the rights of said general 2478 agents and managers under the terms of their said contracts with said respondent corporation and in disregarding their rights as creditors of said respondent corporation, and in transferring said property rights of said general agents and managers to said New Company without providing therefor substantial or any compensation or consideration to said general agents and managers.

\*Wherefore, The Pacific Mutual Agency Association, intervener, prays that said rehabilitation,

2479 sale and transfer of assets and reinsurance agreement, and the order of court authorizing and approving the same, be modified and amended so that paragraph 14 of said agreement shall read as follows:

“14. The New Company hereby assumes, subject to the limitation and exception hereinafter stated, any obligations under any contract heretofore made by the Old Company with any agent (regardless of classification), manager, or  
2480 supervisor, it being recognized that the services of the agents who produced or under whose direction or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force, is to the ultimate interest and advantage of the policyholders of the Old Company. The New Company shall not assume or be bound by any agreement which the Old Company may have made with agents with respect to payment of  
2481 commissions on policies after lapsation.”  
and for such other and further relief as to the court may appear equitable and just in the premises.

COSGROVE & O'NEIL

By T. B. COSGROVE,

*Attorneys for Intervener.*

Verified.

Endorsed: Filed Aug. 28, 1936, 12:15 p. m.  
L. E. Lampton, county clerk, by J. MacGregor,  
deputy.

2482 [TITLE OF COURT AND CAUSE.]

**Order Ratifying and Confirming Intervention  
of Pacific Mutual Life Insurance Com-  
pany, and Ratifying and Confirming Or-  
der to Show Cause Issued on Petition for  
Intervention of Said Pacific Mutual Life  
Insurance Company.**

2483 Whereas, heretofore and on the 23rd day of  
July, 1936, Pacific Mutual Life Insurance Com-  
pany, a corporation, filed herein its petition for  
leave to intervene as a party in this proceeding  
and for an order to show cause why the prayer  
of its said petition in intervention should not be  
granted; and

2484 Whereas, this court on the same day, acting  
through Honorable Douglas L. Edmonds, one  
of the judges of this court, issued its order there-  
on permitting such intervention, and issued an  
order directing notice to be given to all interested  
parties and permitting them to appear and pre-  
sent any objections they had to the granting of  
the prayer of said petition in intervention of said  
Pacific Mutual Life Insurance Company; and

Whereas, said Pacific Mutual Life Insurance  
Company was on July 23, 1936, and ever since  
has been, a proper and a necessary party to this



2485 cause, and it appearing to this court that it would have been the duty of the court to bring said Pacific Mutual Life Insurance Company into this proceeding as a party had it not voluntarily sought leave to intervene, and it further appearing that the cause of justice will be promoted by confirming and ratifying said leave to intervene and said order to show cause issued thereon as of July 23, 1936; and

2486 This court and the parties to this proceeding having recognized said Pacific Mutual Life Insurance Company as being a party intervener in the cause ever since July 23, 1936, all parties to this proceeding having treated it, as being a party intervener in this proceeding;

And other good cause appearing therefor, it is hereby ordered:

2487 1. The application of said Pacific Mutual Life Insurance Company, a corporation, to intervene in this proceeding is granted as of the time that said application was filed, to wit, July 23, 1936, and it is ordered that said Pacific Mutual Life Insurance Company is and has been a party to this proceeding and cause at all times from and after the filing of its said application for leave to intervene.

2488 2. The order of this court made by said Honorable Douglas L. Edmonds granting leave to intervene is confirmed, ratified and approved as of the same date.

2489 3. The order of this court signed by said Honorable Douglas L. Edmonds, dated July 23, 1936, directing notice of the hearing on said petition in intervention of Pacific Mutual Life Insurance Company to be given and affording to interested parties an opportunity to appear and be heard thereon, is hereby adopted, confirmed, ratified and approved as of July 23, 1936.

Done in open court this 25 day of August, 1936.

HENRY M. WILLIS,

*Judge of Said Superior Court.*

2490 Endorsed: Filed Aug. 29, 1936. L. E. Lampton, county clerk; by A. G. Stanham, deputy.  
D. 11.

2491 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404-673.

2492 Petition of E. B. Tilton, Wilber G. Katz, and Frank L. Stebbins, as a Committee Representing Holders of Non-Cancellable Health and Accident Policies of Respondent for Leave to Intervene.

Now come E. B. Tilton, Wilber G. Katz and Frank L. Stebbins, by Bell, Boyd & Marshall and Newlin & Ashburn, their attorneys, and respectfully represent to the court as follows:

1. Petitioner, Wilber G. Katz, has heretofore, 2493 together with Norman Crawford and Robert A. Crawford, filed an intervening petition in this cause objecting to the plan and agreement of rehabilitation and reinsurance for the respondent presented to the court on or about July 22, 1936.

2. On August 18, 1936, said E. B. Tilton, as chairman, together with said Wilber G. Katz, and Frank L. Stebbins, as secretary (both of

2494 whom reside in the county of Cook and state of Illinois and are residents of that state), formed a committee for the holders of non-cancellable health and accident policies issued by The Pacific Mutual Life Insurance Company of California, respondent herein.

3. Said E. B. Tilton holds policy No. 5512192 of respondent's non-cancellable health and accident policies, issued to him under date of December 14, 1927, carrying an indemnity rate for total loss of time of \$200 per month. Said Frank L. Stebbins holds policy No. 5512073 of respondent's non-cancellable health and accident policies, issued to him under date of January 12, 1928, carrying an indemnity rate for total loss of time of \$100 per month. All premiums have been duly paid under said policies, and they are now in full force and effect.

2495 Your petitioner, E. B. Tilton and Frank L. Stebbins, respectfully pray that they may be allowed to intervene in these proceedings under the petition heretofore filed by Wilber G. Katz, et al., and that they may be made additional intervening petitioners in said petition.

4. Said petitioners named in this petition further represent that not until August 7, 1936,

2497 did some of them learn in the public press of the pendency of the original plan of reorganization proposed in these proceedings for respondent and that objections must be filed thereto by order of court on or before August 12, 1936. Your petitioner E. B. Tilton was at that time (August 7) preparing to organize a committee for policyholders, but refrained from doing so due to public announcement made in Chicago of the

2498 organization in that city of a similar committee, which committee advertised in the public press and gave interviews to the effect that it intended vigorously to prosecute the rights of such policyholders in these proceedings. Under date of August 15, 1936, public announcement was made by said committee just mentioned that it would dissolve and would take no further action in these proceedings. Thereupon, your said peti-

2499 tioner E. B. Tilton asked Frank L. Stebbins and Wilber G. Katz to join with him in forming a committee for the holders of such policies, and such committee was thereupon formed. Said committee has retained counsel and has taken actuarial advice with respect to the methods to be pursued which will best conserve the assets and insurance business of respondent herein, and

2500 your petitioners request that as such committee they may participate in these proceedings and may join in objecting to said original plan of rehabilitation.

5. Your petitioners therefore respectfully pray that as such committee they may be permitted to intervene herein and to be made additional parties petitioner to the intervening petition of Wilber G. Katz, Norman Crawford and  
2501 Robert Crawford heretofore filed in these proceedings.

~~E. B. TILTON,~~  
WILBER G. KATZ and  
FRANK L. STEBBINS,

as a committee for the holders of nont cancellable health and accident policies of respondent,

By BELL, BOYD & MARSHALL &  
NEWLIN & ASHBURN,

2502

*Their Attorneys.*

BELL, BOYD & MARSHALL,  
NEWLIN & ASHBURN,  
*Their Attorneys.*

Verified.

Endorsed: Filed Sep. 1, 1936, 3:06 p. m.  
L. E. Lampton, county clerk; by C. J. Bergquist,  
deputy.



2503 [TITLE OF COURT AND CAUSE.]

**Order.**

Upon the verified petition of E. B. Tilton, Wilber G. Katz and Frank L. Stebbins, the Commissioner of Insurance being present by counsel, the court having examined said petition and heard counsel, and being fully advised in the premises,

2504 It is hereby ordered that leave be and it is hereby granted said E. B. Tilton, Wilber G. Katz and Frank L. Stebbins as a committee representing holders of noncancellable health and accident policies of respondent, to intervene in these proceedings and to become additional parties petitioner in the intervening petition of Wilber G. Katz; Norman Crawford and Robert A. Crawford heretofore filed herein.

2505 Done in open court this 1st day of September, 1936.

HENRY M. WILLIS,  
*Judge of Said Superior Court.*

Endorsed: Filed Sep. 1, 1936, 3:08 p. m.  
L. E. Lampton, county clerk; by C. J. Bergquist,  
deputy.

2506 [TITLE OF COURT AND CAUSE.]

Return of: David Lynn Openshaw, Rulon Wall Openshaw, Nod I. Mulville, Gilbert Knudtson, Reuel Leslie Olson, and Delvy Thomas Walton to Order to Show Cause Re Rehabilitation, Sale and Transfer of Assets, etc.

2507 Come now David Lynn Openshaw, Rulon Wall Openshaw, Nod I. Mulville, Gilbert Knudtson, Reuel Leslie Olson, and Delvy Thomas Walton, as objecting parties in the above entitled proceeding, and in answer to the petition on file herein, dated August 14, 1936, re rehabilitation, sale and transfer of assets, etc., and by way of reply and return to the order to show cause with respect thereto, issued by this court on August 14, 1936, respectfully show:

I.

2508 That these objecting parties are now, and from the dates hereinafter specified have been, the owners and holders of non-cancellable income policies in the respondent company, The Pacific Mutual Life Insurance Company of California, as follows:

1. Said David Lynn Openshaw made application for and had issued to him by respondent company on August 21, 1929, policy No. 5602549, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and

2509 renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of one hundred forty dollars (\$140.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

2510 2. Said Rulon Wall Openshaw made application for and had issued to him by respondent company on August 31, 1931, policy No. 5623536, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form ~~NO~~ A754, and renewable to age of sixty (60), and for which he paid the annual premium at the time of issuance thereof of eighty-four dollars (\$84.00), and has paid the said annual premium during each successive year thereafter, up to the present  
2511 time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

3. Said Nod I. Mulville made application for and had issued to him by respondent company on March 11, 1931, policy No. 5605206, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age of

2512 sixty (60), and for which he paid the annual premium at the time of issuance thereof of seventy-three dollars (\$73.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

4. Said Gilbert Knudtson made application for and had issued to him by respondent company 2513 on January 15, 1920, policy No. 2668398, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. 232Z, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of fifty dollars (\$50.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim 2514 has heretofore been made on the basis of such contract of insurance.

5. Said Reuel Leslie Olson made application for and had issued to him by respondent company on October 3, 1928, policy No. 5518154, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of forty-

2515 one dollars twenty-five cents (\$41.25), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

6. Said Reuel Leslie Olson further made application for and had issued to him by respondent company on February 13, 1928, policy No. 5524946, designated as a non-cancellable  
2516 income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of fifty-seven dollars seventy-five cents (\$57.75), to February 13, 1934, at which time said premium was reduced to twenty-four dollars seventy-five cents (\$24.75), and paid at said reduced rate up to the present time, and said policy of insurance is now in full force and  
2517 effect; that no claim has heretofore been made on the basis of such contract of insurance.

7. Said Delvy Thomas Walton made application for and had issued to him by respondent company on September 1, 1930, policy No. 5609874, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance

2518 thereof of eighty-two dollars (\$82.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

8. Said Delvy Thomas Walton further made application for and had issued to him by respondent company on September 1, 1933, policy  
2519 No. 5635474, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A776, and renewable to age fifty-five (55), and for which he paid the annual premium at the time of issuance thereof of fifty-nine dollars (\$59.00), and has paid the said annual premium during each successive year thereafter, up to the present  
2520 time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

## II.

That each of the objecting parties hereto are young men, and entered into the contract of insurance against disability with the respondent company, The Pacific Mutual Life Insurance Company of California, in good faith and in the



2521 prime of youth, seeking protection against any  
such contingencies as might occur, through dis-  
ability and for protection in their respective pro-  
fessions as contemplated under the terms of  
said policies above, and in strict reliance upon  
the representations of the duly authorized rep-  
resentatives and agents of said respondent com-  
pany as to its honesty, fidelity, and standing in  
the insurance field and among major insurance  
2522 companies.

### III.

That your petitioner herein, the Insurance  
Commissioner, in the formulation and prepara-  
tion of the rehabilitation and reinsurance plan  
and agreement concerning respondent corpora-  
tion, should provide for the equal protection of  
the rights of the objecting parties hereto under  
their respective non-cancellable income policies;  
2523 along with and equal to any other rights of  
contract holders of insurance, made, issued, and  
outstanding by the respondent corporation; that  
the insurance commissioner is without authority  
to prefer one class of policyholder over another  
class, or to claim that certain reserves are appli-  
cable to one type of policy, and that other, lesser  
or no reserves are available for the protection  
of the class known as non-cancellable income

2524 policyholders; that to attempt any such classification would unfairly discriminate against the accrued and vested rights of these objecting parties and materially and adversely affect their said interests.

#### IV.

That the court is without power to authorize the insurance commissioner and petitioner herein to prefer the holders of life insurance or other 2525 policies issued by respondent corporation over these holders of non-cancellable income policies in said respondent corporation, and that authority extended to said insurance commissioner should recognize the equal rights under the law of all policyholders as a single class or group, so far as the said contract rights or vested interests have accrued thereunder; and as pertain to the existing assets and reserves of said re- 2526 spondent corporation; that any attempt by which the rights and interests of these non-cancellable policyholders are attempted to be subordinated or subject to prior rights of any other class of policyholder in and to its assets and reserves are without the power and authority of this court, or the insurance commissioner acting thereunder, and should receive judicial denunciation as an attempt to discriminate unfairly against this particular class of policyholder.

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V.

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That the assets and reserves of respondent corporation should be held by petitioner as conservator, and should not be sold or transferred to any other person, firm, or corporation, unless and until such disposition thereof may be had on a fair and equitable basis, consistent with the value thereof; that the proceeds therefrom be held and applied in equal share and interest among all policyholders of whatsoever class, character, or nature, of respondent corporation, so as to afford these objecting parties the value of their interests in said assets and fair and equitable protection under the contracts hereinabove set forth and presently existing between them and respondent corporation, and for which premiums have been exacted by the latter from year to year.

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VI.

That any plan or agreement of respondent corporation should not be approved by this court unless it offers a reasonable prospect for successful rehabilitation of the debtor corporation, and provides for distribution of available assets according to the respective claims represented by policies of insurance now in force of all parties, or which may be filed in the future, and further

2530 provides an alternative for cash reimbursement of premiums paid after allowing a reasonable sum for past protection under such non-cancelable policies on a fair actuarial basis.

## VII.

2531 That these objecting parties be permitted to file in this proceeding, their claims for back premiums paid to the date hereof, and that the last premium payments made be held by petitioner, the Insurance Commissioner, intact, and such unused portion thereof returned to them upon determination of their rights and interests under policies herein set forth, and in and to the assets and reserves of the respondent corporation.

Wherefore, these objecting parties pray:

(a) That this court consider the fairness and justness of any plan of rehabilitation submitted, 2532 and carefully scrutinize any proposed sale or transfer of the assets of respondent corporation;

(b) That the rights of these objecting parties as non-cancellable income policyholders be adjudged to be vested rights, and to be entitled to equal protection in the reserves of respondent corporation, along with all other policyholders thereof;

2533 (c) For the protection of the rights and interests of said policyholders in and to the assets of said respondent corporation, and their application in equal share to the claims herein asserted, or which may in the future be filed, and

(d) For such other and further relief as to the court may seem just and equitable in the premises.

2534

DAVID LYNN OPENSHAW,  
RULON WALL OPENSHAW  
NCD I. MULVILLE  
GILBERT KNUDTSON  
REUEL LESLIE OLSON  
DELVY THOMAS WALTON

DELVY T. WALTON,

*Attorney for Objecting Non-  
cancellable Policyholders.*

2535 Verified.

Endorsed: Received copy of the within return this 22 day of Sept., 1936. U. S. Webb, atty. gen., by John L. Flynn, deputy. 5

Receipt of copy of the within instrument is acknowledged this 22nd day of Sept., 1936. Overton, Lyman & Plumb, by E. Ringe.

Filed Sep. 22, 1936, 11:17 a. m. L. E. Lamp-ton, county clerk; by R. J. Curtis, deputy.

2536 [TITLE OF COURT AND CAUSE.]

**Petition for Approval of Rehabilitation and  
Reinsurance Agreement.**

Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as conservator of The Pacific Mutual Life Insurance Company of California, and respectfully shows to the court:

I.

2537 The Pacific Mutual Life Insurance Company of California, hereinafter referred to as the "Old Company", is, and at all times herein mentioned was, a corporation organized and existing under the laws of the state of California; and was prior to July 29, 1936, authorized to do and doing a life and disability insurance business therein and elsewhere.

II.

2538 That the Old Company has been engaged in the business of life insurance for a period of over fifty years, and, as of December 31, 1935, had life insurance in force in excess of six hundred million dollars (\$600,000,000.00), approximately two-thirds of which said life insurance business was written on a participating basis and the remainder on a non-participating basis; that said life insurance business was very profitable and had built up adequate assets behind its reserves in very substantial amounts; that in ad-



2539 dition thereto, and for many years last past, said  
Old Company had been transacting a commercial accident and health business which, in recent years, earned a net annual profit of several hundred thousand dollars.

### III.

That in the course of its operations said Old Company has built up an extensive agency organization which operates throughout more than forty (40) of the various states of the United  
2540 States wherein said Old Company was authorized to transact the business of life and disability insurance; that said agency organization has been built up over the entire period of existence of said Old Company and at an expense of several million dollars; that by reason of the great volume of its business and the extent and nature of its operations, the Old Company built up a good will which is recognized throughout the entire United States.

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### IV.

That, commencing in the year 1918, said Old Company started issuing its so-called "Non-Cancellable Income Disability Policies" (hereinafter referred to as "Non-Can Policy"); that by reason of actuarial under-calculations, the said Non-Can Policies were issued by the Old Company on an entirely inadequate premium rate and, as later experience developed, said premiums were found to be insufficient to pay the losses in-

2542 curred thereon; that although in subsequent years said premium rates were increased, further experience disclosed that even at said increased rates, said premiums were not sufficient to maintain the reserves necessary to mature the policy obligations.

V.

2543 That in March, 1936, your petitioner together with the insurance authorities of five of the other states of the United States in which said Old Company transacted business, commenced a formal examination customarily known as a "convention examination", of the business and affairs of said Old Company as of December 31, 1935; that said examination was completed on the 21st day of July, 1936, and the report thereof is the last report of examination made by your petitioner of said Old Company; that as a result of said examination, your petitioner determined that the premiums charged by said Old Company on said Non-Can Policies were inadequate and that there was a deficiency in excess of twenty-three million dollars (\$23,000,000.00) in the reserve necessary to mature the Non-Can Policies theretofore written by said Old Company; that in excess of sixty per cent (60%) of the insurance business written by said Old Company was conducted in states other than California; that said report of said convention examination disclosed the financial status of said

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2545 Old Company and is filed with the insurance authorities of the various states wherein said Old Company is authorized to transact and transacts business; that said report of said convention examination disclosed that said Old Company was in such condition that its further transaction of business would be hazardous to its policyholders and, when filed with the insurance authorities of other states in which it transacted business, would result in a suspension or cancellation of  
 • 2546 its certificate of authority in most, if not all, of said states.

# VI.

As a result of his findings in the course of said examination, and because of the hazardous condition of the Old Company as disclosed thereby, your petitioner, on July 22, 1936, filed in the above entitled court his verified application pursuant to section 1011 of the Insurance Code of the state of California; and said court did, on  
 2547 July 22, 1936, in this proceeding, by order duly given and made pursuant to said section, appoint your petitioner as conservator of the Old Company. On August 11, 1936, said court, by order duly given and made herein, did ratify, approve, and confirm said order and appointment, did adopt the same, and did reappoint your petitioner as conservator as aforesaid.

Your petitioner did, pursuant to his appointment as conservator as aforesaid, take posses-

2548 sion of the assets of the Old Company and did  
carry on and conduct the business and affairs of  
the Old Company.

VII.

2549 It was obvious to your petitioner that the good  
will of the Old Company, the value of its agency  
organization, and its value as a going concern,  
must be preserved, and that immediate steps to  
that end must be taken. Your petitioner accord-  
ingly caused to be organized under the laws of  
the state of California a corporation known as  
Pacific Mutual Life Insurance Company (here-  
inafter referred to as "New Company"), and on  
July 22, 1936, caused to be transferred thereto,  
from funds of the Old Company coming into his  
hands as conservator, the sum of three million  
dollars (\$3,000,000.00) in payment for all of its  
capital stock. Your petitioner, on the same date,  
transferred to said New Company all of the other  
assets formerly, and as of July 22, 1936, held by  
2550 respondent corporation, or by himself as con-  
servator, except the stock of said New Company,  
and rights or claims, if any, of whatsoever nature  
which the Old Company might have against any  
of the present or past officers, directors, or em-  
ployees, as such, of respondent corporation, or  
against any other person, firm, or corporation by  
reason of wrongful, or illegal acts or omissions,  
if any, of any of the past or present officers,  
directors or employees of respondent corporation,

2551 including rights or claims under any fidelity or surety bond or bonds given to or in favor of the respondent corporation to secure the faithful performance of any of its officers, directors, or employees of any of their duties as such.

Since said July 22, 1936, your petitioner, as conservator, and through the agency and instrumentality of the New Company, has continued to carry on and conduct the business and affairs of the Old Company, and to preserve, so far as possible, its good will, going concern value, and agency organization.

✓ In so doing your petitioner was required to do many acts in the conduct of said business, and accordingly he applied to the court for an order, and this court, by its order duly given and made herein on August 17, 1936, did authorize and direct your petitioner and the New Company to continue to perform the acts required of or permitted to be performed by them under the terms of a certain Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement dated July 23, 1936, and on file herein, and to do certain acts in connection therewith more specifically enumerated in said order.

#### VIII.

Your petitioner, both prior and subsequent to his appointment as conservator as aforesaid, has given diligent study and attention to the problem of determining what steps would best serve the

2554 interests of all persons concerned; he has made diligent inquiry among possible reinsurers or purchasers for the purpose of determining what avenues were open; he has invited the presentation of plans or offers; he has carefully examined and considered all plans and suggestions which have been submitted to him for the rehabilitation of the Old Company, or for the reinsurance of its business in whole or in part.

2555 In the opinion of your petitioner, no plan of rehabilitation or offer of reinsurance has been presented which affords to the policyholders of the Old Company the measure and the opportunity of protection provided by that contained in the proposed Rehabilitation and Reinsurance Agreement (attached hereto, marked "Exhibit A", and made a part hereof), under which your petitioner proposes to rehabilitate the Old Company through the medium of the New Company, by reinsuring in the New Company without lien

2556 all of the insurance business (other than Non-Can Policies) of the Old Company, and by partially reinsuring said Non-Can Policies, subject to restoration of benefits as more fully appears from said Exhibit "A". Your petitioner accordingly submits said proposed agreement, and asks approval thereof.

#### IX.

— Your petitioner reserves the right, at or prior to the hearing on the petition, to propose amend-



2557 ments to said proposed rehabilitation and reinsurance agreement.

Wherefore, your petitioner prays that an order issue out of the above entitled court, fixing the time and manner of notice of a hearing to be held hereon, and directing all persons interested herein to show cause, if any they have, at a time and place to be fixed therein, why an order should not be made and entered herein:

2558 (1) ratifying, confirming, and approving the acts of your petitioner in causing to be formed; forming, and subscribing to and purchasing the capital stock of Pacific Mutual Life Insurance Company, a California corporation;

(2) ratifying, confirming, and approving the transfer and conveyance heretofore made of the assets, properties, books, and records of The Pacific Mutual Life Insurance Company of California to Pacific Mutual Life Insurance Company;

2559

(3) ratifying, confirming, and approving the rehabilitation and reinsurance agreement dated as of July 22, 1936, (with such amendments as may be proposed at or prior to the hearing hereon as hereinbefore provided) proposed to be executed by and between your petitioner and said Pacific Mutual Life Insurance Company (a copy of which said agreement is attached hereto); and authorizing and directing your petitioner to execute and enter into said agreement;

2560 (4) authorizing and directing your petitioner to transfer, convey, release, set over, and assign to said Pacific Mutual Life Insurance Company all of the assets, properties, books, and records of The Pacific Mutual Life Insurance Company of California, excepting only (a) the capital stock of Pacific Mutual Life Insurance Company held by him and (b) the rights or claims, if any, which The Pacific Mutual Life Insurance Company of California may have against any of the  
2561 present or past officers, directors, or employees, as such, of The Pacific Mutual Life Insurance Company of California, or against any other person, firm, or corporation by reason of or in connection with wrongful or illegal acts or omissions, if any, of any of said past or present officers, directors, or employees, including rights or claims on any fidelity or surety bond or bonds given to or in favor of The Pacific Mutual Life Insurance Company of California to secure the  
2562 faithful performance by any of its said officers, directors, or employees of any of their duties as such;

(5) authorizing and directing your petitioner fully and faithfully to perform, carry out, and discharge all of the obligations, terms, conditions, and covenants on his part required to be performed under the terms of said rehabilitation and reinsurance agreement;

(6) ordering, decreeing, and directing that in respect of all Federal taxes finally determined

- 2563** to be due from The Pacific Mutual Life Insurance Company of California, the United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of Pacific Mutual Life Insurance Company as it had against the assets of The Pacific Mutual Life Insurance Company of California had the within proceedings not intervened; and ratifying, confirming, and approving specifically so much of said rehabilitation and reinsurance agreement as relates (a) to the foregoing priority and preference of the United States, (b) to the agreement of Pacific Mutual Life Insurance Company that the United States shall have the same remedies against it and its assets with regard to the collection of said taxes as the United States had against The Pacific Mutual Life Insurance Company of California; that no provision of said agreement shall be construed as limiting the operation of said provisions in respect of said taxes; that the assets of The Pacific Mutual Life Insurance Company of California be not so valued nor the amount of the reserves so redetermined as to affect prejudicially the rights or remedies of the United States, and (c) to the agreement of all parties to said rehabilitation and reinsurance agreement that in consideration of the forbearance on the part of the United States at this time to enforce payment of its taxes, the right of the United States to enforce the provisions of said agree-

2566 ment shall be as full and complete as if the United States were named as a party thereto;

(7) ordering that the above entitled court shall reserve and retain jurisdiction of the within proceedings for the purpose of extending or restricting the period or extent of the moratorium on cash surrender values and policy loans provided in said rehabilitation and reinsurance agreement, and for the purpose of doing any other  
2567 act or making or entering any order, degree, judgment, or ruling required, permitted, or requested to be done, made, or entered in or pursuant to the terms of said agreement;

(8) ratifying, confirming, and approving any and all acts, things, or transactions performed, done, or entered into by your petitioner in the performance of and within the intent and meaning of the direction of this court in the order made and entered herein on August 11, 1936,  
2568 directing your petitioner to conduct, manage, transact, and operate the business and affairs of The Pacific Mutual Life Insurance Company of California as a going insurance business, and to do any and all things your petitioner might deem necessary and appropriate for that purpose;

(9) ratifying, confirming, and approving that certain order permitting the performance

2569 of acts and the making of payments necessary to conserve and protect assets and to prevent the waste thereof made and entered herein by this court on August 17, 1936.

SAMUEL L. CARPENTER, JR.,

SAMUEL L. CARPENTER,

Insurance Commissioner of the State of California as Conservator of The Pacific Mutual Life Insurance Company of California,

2570

*Petitioner.*

U. S. WEBB,

*Attorney General*

By JOHN L. FLYNN,

*Deputy Attorney General,*

FRANK L. GUERENA,

FRANK L. GUERENA,

MITCHELL, SILBERBERG & KNUPP,

By SHEPARD MITCHELL,

*Counsel for Petitioner.*

2571

Verified.

#### MEMORANDUM OF POINTS AND AUTHORITIES.

The Insurance Commissioner, as conservator, may, subject to the approval of the court, re-insure the business of an insurer against which he has proceeded; as provided by article XIV of chapter 1 of part 2 of the Insurance Code, or enter into rehabilitation agreements.

Insurance Code, section 1043.



2572

EXHIBIT "A".

REHABILITATION AND REINSURANCE  
AGREEMENT

This Agreement, made and entered into as of the 22nd day of July, 1936, between Pacific Mutual Life Insurance Company, a California corporation, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as conservator of The Pacific Mutual Life Insurance Company of California, a California corporation,

2573

Witnesseth:

That for and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

Definitions

(1) "Commissioner" shall mean Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California, or his successors in office as such Commissioner.

2574

"Conservator" shall mean Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, in his capacity as Conservator of The Pacific Mutual Life Insurance Company of California, or his successors in office as such Conservator.

"Old Company" shall mean The Pacific Mutual Life Insurance Company of California.



2575 "New Company" shall mean Pacific Mutual Life Insurance Company.

"The Court" shall mean the Superior Court of the State of California, in and for the County of Los Angeles.

"Non-Can Policies" shall mean those policies of the Old Company usually known as its "Non-Cancellable Income Policies" including the Aggregate form thereof.

2576 "States" when referred to a governmental subdivision shall be deemed to include Territories and the District of Columbia.

2577 "Properties of the Old Company" shall mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character, and description whatsoever; and wheresoever situated, owned by the Old Company at the time of the appointment of the Conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as Conservator, plus all property acquired by the Conservator and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) rights or claims, if any, of whatsoever nature which the Old Company may have against any of the present or past officers, directors, or employees, as such, of the Old Company, or against any other person, firm,

2578 or corporation, by reason of or in connection with wrongful or illegal acts or omissions, if any, of any of the past or present officers, directors, or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors, or employees of any of their duties as such.

“Effective Date of this Agreement” shall mean  
2579 July 22, 1936, at the hour of one o'clock P. M., Pacific Standard Time.

“Liquidator” shall mean any person hereafter appointed Liquidator of the Old Company in the proceeding now pending in the Court entitled “Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California vs. The Pacific Mutual Life Insurance Company of California”, and bearing number 404673 in the records of the Court; and any person succeeding to  
2580 the office of such Liquidator.

#### Transfer of Assets

(2) The Conservator agrees, by appropriate instrument of conveyance, to sell, assign, convey, release, transfer, set over, and deliver, to the New Company, the properties of the Old Company; and to execute any and all further documents or instruments as may be reasonably necessary to effectuate and confirm the title of the New Company thereto.

- 2581 The Conservator shall not be required to make manual-delivery of any cash or securities deposited by the Old Company with any governmental authority as a condition to the conduct of its business, nor to make manual delivery of any premiums or other assets which are in the possession of receivers of the Old Company or its assets or business, or in the possession of other governmental authorities, in states other than California; but in connection with receivership
- 2582 or other proceedings in such other states, the Conservator shall do any and all things proper for him to do to bring about and accomplish the delivery and transfer of such premiums or other assets to the New Company.

- The Conservator shall transfer and deliver to the New Company the full amount of all premiums on any policy reinsured and assumed hereunder which have been paid to the Conservator on or after the effective date of this agreement,
- 2583 and the New Company shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. If any policy holder of the Old Company whose policy may be reinsured or assumed hereunder shall have paid his premium thereon to the Conservator subsequent to the effective date of this agreement, and shall thereafter elect to reject rein-

- 2584 surance and assumption of his such policy hereunder; and if the Court shall direct the Conservator or Liquidator to return said premium (or the net premium or premiums less charge for insurance service or collection charge or otherwise); then in those events the New Company shall repay to the Conservator or Liquidator, on demand, said premium, or so much thereof as the Court may have ordered returned by the Conservator or Liquidator, as aforesaid. Pursuant to the provisions of Section 1043 of the Insurance Code of the State of California it is agreed that subsequent to the effective date of this agreement, and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company shall be made without first obtaining the written approval of the Commissioner.

Reinsurance and Assumption of Policies Other Than Non-Can Policies

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(3) The New Company does hereby reinsure and assume, as of the effective date of this agreement, with the exception hereinafter provided, the liability of the Old Company and of the Conservator under all life, endowment, annuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to, health and accident benefits, waiver of premium disability benefits, permanent and total disability benefits,

- 2587 home office employees' disability benefit plan, and all supplementary contracts, annuity contracts, and all reinsurance contracts, issued or assumed by the Old Company and outstanding and in force on the books and records of the Old Company at the effective date of this agreement, or issued by the Conservator in his name as Conservator, in the name of the Old Company, or in the name of the New Company, subject, however, to any and all defenses, offsets, counter-
- 2588 claims, cross-complaints, and rescission rights against said policies or contracts or against any claims and actions thereon, which would have been available to the Old Company or the Conservator as aforesaid had this agreement not been made; provided, however, that no outstanding Non-Can Policies are reinsured or assumed under this paragraph, and all of such policies are hereby expressly excepted from the obligations of the New Company under this paragraph.

2589

Reinstatement of Lapsed Policies

(4) The New Company will reinstate any policies heretofore issued, assumed, or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the effective date of this agreement, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms

2590 are fulfilled to the satisfaction of the New Company.

2591 The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of the policies reinsured and assumed under Paragraph (3) hereof, which have lapsed since the effective date of this agreement, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within seventy-five (75) days after the entry of the order of the Court approving this agreement. Upon the reinstatement of such lapsed policy it shall, for all purposes, be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of this agreement and be subject to the terms and conditions of this agreement.

2592

Payment of Policy Claims Other Than Claims  
on Non-Can Policies

(5) The New Company will pay in full, in accordance with the terms and conditions of all policies including annuities under which claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the effective date of this agreement, all policy claims against the Old Company



- 2593 (except claims on Non-Can Policies) including, without limiting the same to, claims for death benefits, matured endowments, annuity payments, permanent total disability and premium waiver benefits, accident and sickness benefits, payments under policy settlement agreements, policy dividends left at interest with the Old Company prior to the effective date of this agreement, and payments under all other matured contracts under which the proceeds of policies and contracts were
- 2594 left with the Old Company prior to the effective date of this agreement; and the New Company will assume the liabilities of the Old Company with respect to deposits, moneys left with the Old Company at interest, overpayments, duplicate payments, or advance payments of premiums, and return of premiums arising from cancellations prior to July 22, 1936; all subject, however, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights
- 2595 against any such claim or claims which would have been available to the Old Company had this agreement not been made.

Participating Department

(6) The New Company agrees to establish a separate department for Participating Life Insurance, and to allocate thereto specifically or in tenancy in common that portion of the assets conveyed to it by the Conservator (other than the Three Million Dollars (\$3,000,000.) trans-

2596 ferred to the New Company for its capital stock) in the ratio in which assets appearing on the books of the Life Department of the Old Company were credited to the Participating Life Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the operations of the business of the Old Company by the Conservator, including the writing of the new participating life insurance by 2597 the New Company, and except assets of the book value of One Million, Seven Hundred Ninety-Two Thousand, One Hundred Eighteen Dollars and Ninety-seven Cents (\$1,792,118.97) transferred by the Conservator to the Accident and Health Department.

The said Three Million Dollars (\$3,000,000.) transferred to the New Company for its capital stock constitutes and shall constitute the capital and paid-in surplus of the New Company; and 2598 neither the Participating Department nor the holders, present or future, of participating policies shall have any right, claim, or interest therein prior to other Departments or their policy holders. The said assets transferred to the Accident and Health Department are and shall be the property of the said Department free from any claim of the Participating Department, or the holders, present or future, of participating policies.

2599 It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets of the Participating Department, and its business, and the receipts in respect of said business shall, subject to the limitations hereinafter contained, be appropriated and held as absolutely for the benefit of and to the security of the policies and policy holders of that Department as though they belonged to a mutual insurance company carrying

2600 on no other business; and, to the extent of the reserves from time to time required on the policies and policy liabilities of said Department, in priority to the claims of all other creditors, past, present, and future, of said Department.

The Board of Directors of the New Company shall, from time to time, and at least annually, transfer from the Participating Department to the funds of the New Company available for its general corporate purposes, such sums as 2601 it may deem available, if any, but in no event exceeding in the aggregate ten per cent. (10%) of the net profits, (before dividends, and without charging thereto cost of acquisition of new business) then accrued on policies of the Old Company reinsured hereunder earned subsequent to the effective date of this agreement (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets, and such reasonable adjustment in the value of any assets,

2602 or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company). Any portions of such ten per cent. (10%) not so transferred at any time shall be cumulative, and shall be transferred from time to time thereafter, from profits, and subject to 2603 limitations as aforesaid. Any statute of limitations which might apply to bar the right to require such transfer is hereby waived.

Any surplus from time to time existing in said Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets, and such reasonable adjustments in the value of any assets, or reserves for anticipated 2604 losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company), may be used only for the following purposes:

(a) The payment of policy dividends to policyholders in accordance with the terms of their policies and in such amounts as the Board of Directors of the New Company may from time to time consider proper and advisable, taking into

2605 consideration the amount of earnings and other relevant data.

(b) For the payment of any of the costs and expenses of operation of said Department, including the acquisition and carrying of new business written by said Department in such amounts as the Board of Directors of the New Company may from time to time deem reasonably necessary or desirable.

(c) Necessary working capital may be supplied to said Department from time to time from any moneys available for general corporate purposes; and the Board of Directors of the New Company shall, when in their discretion it shall appear practicable, in subordination to the rights of the policyholders of said Department, and from surpluses accumulated in said Department after the payment of reasonable and appropriate dividends to the policyholders thereof, as provided in subparagraph (a) of this paragraph 6;  
2607 restore the amount of the working capital so supplied, together with interest thereon at the average rate of interest earned by the New Company during the period, to the sources from which it came.

(d) For the payment into funds of the New Company available for its general corporate purposes of a portion (not exceeding ten per cent. (10%) of the net earnings of the participating policies of the Old Company reinsured hereunder, as hereinbefore provided. In computing dividends payable to participating policyholders, any



2608 amounts paid under this subparagraph shall be charged against said policies reinsured and no part thereof shall be charged against participating policies issued by the New Company.

(e) Any remaining portion of said surplus shall be kept separate and distinct from the funds of all other departments and shall be held as absolutely for the security of and the benefit of the policyholders of the Participating Department as though it belonged to a mutual company

2609 carrying on no other business.

#### Non-Participating Department

(7) The New Company further agrees to establish a separate department for its Non-Participating Life Insurance, and to allocate thereto specifically or in tenancy in common that portion of the assets conveyed to it by the Conservator in the ratio in which assets appearing on the books of the Life Department were credited to the Non-Participating Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the operation of the business of the Old Company by the Conservator, including the writing of new non-participating life insurance by the New Company.

2610 It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets from time to time held in said Non-Participating De-



2611 partment shall, to the extent of the reserves from time to time required on the policies and policy liabilities of said Department, be appropriated, and held as absolutely for the benefit of and to the security of the policies and policyholders of said Department as though they belonged to a company carrying on no other business, and in priority to the claims of all other policyholders or creditors, past, present, or future, of the New Company. •

2612 Any surplus from time to time existing in said Non-Participating Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject

2613 only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company) may from time to time be used for the general corporate purposes of the New Company subject to any express limitations herein contained.

#### Accident and Health Department

(8) The New Company further agrees to establish a separate department for its Accident and Health Insurance (including Non-Can Policies), and to allocate thereto the assets conveyed

2614 to it by the Conservator which had been credited to the Accident and Health Department of the Old Company on its books as of July 22, 1936, and those assets of the book value of One Million, Seven Hundred Ninety-two Thousand, One Hundred Eighteen and 97/100 Dollars (\$1,792,118.97) heretofore transferred by the Conservator to the Accident and Health Department, subject to such changes as may have been made therein in the ordinary course of the operation of

2615 the business of the Old Company by the Conservator, including the writing of new accident and health insurance by the New Company.

It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets from time to time held in said Department shall, to the extent of the reserves from time to time required on the policies and policy claim liabilities of said Department, be appropriated for the  
2616 benefit of and to the security of the policies and policy claim liabilities hereof in priority to the claims of all other policyholders or creditors, past, present, or future, of the New Company.

Any surplus from time to time existing in said Department (after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment

2617 upon the order of the Commissioner made in the course of or as a result of any examination of the New Company) may from time to time be used for the general corporate purposes of the New Company subject to any express limitations herein contained.

Inter-Departmental Transactions

2618 (9) Neither anything in this agreement contained; nor the separating of the business of the New Company into Departments, as aforesaid, shall be deemed to prevent the apportionment among Departments of their fair and equitable shares of expenses; nor the exchange, upon a fair and equitable basis, of assets between Departments; nor reinsurance between Departments in the ordinary course of business and at customary reinsurance rates. Any determination by the Board of Directors of the New Company with respect to any such apportionment or exchange shall be final and conclusive upon all persons interested, subject only to adjustment upon order of the Commissioner made in the course of or as a result of any examination of the New Company.

2619

Reinsurance and Assumption of Non-Can  
Policies.

(10) The New Company does hereby reinsure and assume, as of the effective date of this agreement, the liability of the Old Company or of the Conservator, whether incurred in his name as

- 2620 Conservator, in the name of the Old Company, or in the name of the New Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the effective date of this agreement, subject, however, to the terms, conditions, and limitations, and only to the extent, hereinafter specifically provided; and subject, further to any and all defenses, offsets, counterclaims, cross-complaints, and rescission
- 2621 rights against such policies or any claims and actions thereon which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

Terms, Conditions, Limitations, and Extent of  
Reinsurance and Assumption of Non-Can  
Policies

- (11) The New Company does not assume any liability for monthly benefits on Non-Can Policies
- 2622 reinsured hereunder unless the disability commenced prior to the effective date of this agreement and notice of claim was filed in accordance with the terms of the policy, and in no event later than twenty (20) days after the effective date of this agreement, except to the extent of the following percentages of the monthly disability benefits originally provided under said policies according to the following premium classes respectively (but subject to restoration of monthly benefits as hereinafter provided):

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Prem. Class	Issued Under Rate Books	Policy Forms	Issued Under Policy Numbers	Percentage of Original Monthly Benefit Assumed By New Company
1918	A1445-A1445Z A1445Y-A1445X A1445W	A231 to A288 inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712000 4730901 to 4731100	20%
1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A294 inc. A365-A366	4628001 to 4700000	35%
1926	A1958-A1958Z A1958Y	A382-A383 A386-A387 A387Z	5500001 to 5600000	45%
1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	55%
1931	A2367	A753 to A756 inc. A763-A764	5620001 to 5635000	65%
1932	A2432-A2432Z A2499 A2499	A775 to A780 inc. Aggregate A1216 to A1221 inc.	5635001 to 6000000 6500001 to 7000000	90% 90%
1935	A2567	Aggregate A1226 to A1229 inc.	7000001 to 7100000	90%

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business, except in states where such filing is not required by law.

2626 Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments at such rates on such policies, to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments as originally provided in his policy.

Reinstatement of Lapsed Non-Can Policies

2627 (12) The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies other than Non-Can Policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 10 and 11 hereof.

Payment of Claims on Non-Can Policies in  
Respect of Disabilities Existing Prior to  
Effective Date of This Agreement

2628 (13) The New Company shall be obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of this agreement with respect to which claims or notices of claims were duly filed in accordance with the terms of such policies, and in any event not later than twenty (20) days after the effective date of this agreement, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation what-



2629 soever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to the terms of any such settlement agreements; and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

2630 Restoration of Benefits Under Non-Can  
Policies

(14) The Board of Directors of the New Company shall from time to time transfer from the funds of the New Company available for its general corporate purposes to a special fund for the restoration of benefits under Non-Can Policies in such manner as the Board of Directors with the approval of the Commissioner may from time to time determine, such amounts as said  
2631 Board of Directors in its discretion shall determine to be not reasonably required for the reasonable, proper and profitable conduct of the operations of the New Company as a going concern. At time of any examination of the New Company by the Commissioner, the Commissioner may require the transfer of additional funds to such special fund, to the extent such additional funds available for general corporate purposes are in his opinion available without interfering with the proper and profitable conduct of the

2632 business of the New Company as a going concern.

The moneys and other assets from time to time held in such special fund shall be used by the New Company, with the approval of the Commissioner, and in such manner as he may from time to time require, for the purpose of paying additional disability benefits to holders of Non-Can Policies then, thereafter, or theretofore entitled thereto, in excess of the amounts required to be paid under paragraph 11 hereof, to the end that the benefits originally provided in said Non-Can Policies as written may eventually be fully paid, including eventual full payment of benefits becoming due prior to the time of such restoration, with interest on deferred restoration payments of such benefits at the rate of three and one-half per cent. ( $3\frac{1}{2}\%$ ) per annum. The extent and manner of the restoration so required or approved by the Commissioner shall be binding upon all holders of Non-Can Policies, and all other persons interested therein.

The New Company may at any time, with the approval of the Commissioner, transfer all of such special fund to the reserves for Non-Can Policies, and, with the approval of the Commissioner, may fully assume and reinsure all Non-Can Policies hereby partially and conditionally reinsured, to the full amount thereof and in accordance with the terms thereof as written;

**2635** and if the Commissioner at the time of any examination of the New Company shall determine that in his opinion the amount of such special fund is sufficient to permit the establishment therefrom of adequate reserves for the full reinsurance of such Non-Can Policies, he may require such transfer and full reinsurance.

Upon such full reinsurance with the approval of or in accordance with the requirements of the Commissioner, the benefits on Non-Can Policies shall be deemed fully restored.

**2636**

After the benefits on Non-Can Policies shall have been fully restored, the said special fund shall be abolished, and any assets remaining therein at that time shall be available for the general corporate purposes of the New Company.

The New Company shall be under no obligation to pay or restore the full benefits under Non-Can policies as originally provided therein, except in the manner and to the extent hereinbefore described: provided, that if title to all or substantially all of the assets of the Accident and Health Department of the New Company shall hereafter be transferred, by voluntary act (other than by statutory merger or consolidation) or by operation of law, to any person who does not in connection with such transfer assume all of the obligations of the New Company to holders of Non-Can Policies, including obligations to restore the benefits thereunder in sub-

**2637**

2638 stantially the manner in this paragraph 14 provided, then and in that event the New Company will be deemed to have fully reinsured and assumed all of the Non-Can Policies, including the obligation to pay in full all installments of the disability benefits originally provided to persons theretofore entitled thereto.

Assumption of Claims against Old Company

(15) The New Company hereby assumes and  
2639 agrees to pay in full:

(a) All costs and expenses of the Conservator, including attorney's fees fixed and approved as required by law.

(b) All Federal taxes finally determined to be due from the Old Company. The United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of the New Company as it had against the assets of the Old Company  
2640 had these proceedings not intervened, and the New Company agrees that the United States shall have the same remedies against it and its assets with regard to the collection of such taxes as the United States had against the Old Company. No provision of this agreement shall be construed as limiting the operation of the provisions of this subparagraph; nor shall the assets of the Old Company be so valued or the amount of the reserves so redetermined as to prejudicially affect the rights or remedies of the United

2641 States. In consideration of the forbearance on the part of the United States at this time to enforce payment of its taxes, all parties hereto agree that the right of the United States to enforce the provisions of the agreement shall be as full and complete as if the United States were named a party hereto.

It is agreed that the foregoing subparagraph (b) shall be embodied in and become a part of the Court's decree of confirmation.

2642 (c) Taxes legally due from the Old Company to any State of the United States, to any County, or to any political subdivision.

(d) Wages, salaries, and pensions legally due to persons employed by the Old Company for services rendered, and current bills and expenses, other than insurance liabilities, in connection with the operation of the business of the Old Company, incurred prior to July 22, 1936, and remaining unpaid, subject of course to any defenses the Old Company may have had thereto.

2643

Assumption of Claims against Conservator

(16) The New Company agrees to indemnify the Conservator against any and all claims and liabilities incurred by him in his capacity as Conservator in connection with the operation of the business of the Old Company, whether in his name as Conservator, in the name of the Old Company, or in the name of the New Company.



**2644**      Assumption of Claims against Liquidator

(17) In the event the Commissioner shall hereafter be appointed Liquidator of the Old Company, the New Company agrees to assume, and does hereby assume and agree to pay, all costs and expenses of such Liquidator, including attorney's fees, fixed and approved as provided by law. The New Company further agrees to pay, and does hereby agree to pay to the Liquidator for payment to claimants an amount equal

**2645** to the sum of all claims against the Old Company filed with the Liquidator and finally allowed; provided, however, that the New Company shall not be required to make any payment or payments on account of any claims so filed with the Liquidator except to the extent and in the manner hereinafter provided (but the New Company, with the consent of the Commissioner, may waive the foregoing limitation and anticipate any such payments):

**2646**      (a) The New Company will, as of the effective date of this agreement, with the approval of or in accordance with the requirements of the Commissioner, establish reserves against all policies and policy liabilities of the Old Company subject to assumption or reinsurance hereunder (but, with respect to Non-Can Policies, only to the extent described in paragraphs 11 and 13 hereof). If any policyholders or policy claimants shall elect to reject assumption and reinsurance here-



2647 under, the New Company agrees to pay to the Liquidator, immediately after the time for filing claim with said Liquidator shall have expired, an amount equal to the reserves so originally established against their policies or claims.

(b) Whenever, pursuant to the provisions of paragraph 14 hereof, any sums are transferred to the special fund for the restoration of benefits under Non-Can Policies, the New Company shall pay to the Liquidator a further sum of  
2648 money bearing the same ratio to the moneys so transferred as the Non-Can Policies (evaluated as hereinafter provided) whose holders have rejected reinsurance hereunder and upon which claims have been filed in the liquidation proceedings as aforesaid, bears to the Non-Can Policies (evaluated as hereinafter provided) whose holders have accepted reinsurance hereunder.

Until such time as the measure of the claims to the allowance of which holders of Non-Can  
2649 Policies who file their claim in liquidation proceedings under the laws of the State of California are entitled shall have been determined to the satisfaction of the Liquidator and he shall so notify the New Company in writing, Non-Can Policies shall, for the purposes of this subparagraph, be evaluated on the basis of the percentage established by paragraph 11 hereof of their monthly benefit originally provided, whether or not the holders thereof have accepted reinsurance hereunder.

- 2650 When the measure of the claim to the allowance of which holders of such policies are entitled, as aforesaid, shall have been determined to the satisfaction of the Liquidator, and he shall so notify the New Company in writing, Non-Can Policies shall thereafter be evaluated for the purposes of this subparagraph, on the basis of allowable claim, whether or not the holders thereof have accepted reinsurance thereunder; but subject to readjustment as herein-
- 2651 after provided in case of any final determination by the courts of California of any other measure.

- In the event payments have been made under any evaluation which is later altered as hereinbefore provided, a recomputation shall be made; and if as a result thereof it appears that there has been an overpayment to the Liquidator, he shall immediately refund to the New Company the amount of such overpayment; but if as a
- 2652 result of such recomputation it shall appear that there has been an underpayment to the Liquidator, the New Company shall adjust such underpayment solely out of funds available for its general corporate purposes, in the manner and upon the terms provided in paragraph 14 hereof for the creation of the special fund there referred to, but in priority to the claims of such fund.

(c) Any remaining amount necessary to pay and discharge the claims as aforesaid shall be

2653 paid at the time benefits under the Non-Can Policies are fully restored.

(d) The aggregate of the payments to be made in subparagraph (a), (b), and (c) hereof, shall not exceed the full amount of claims finally allowed in the Liquidation proceedings as aforesaid. Any moneys paid hereunder and remaining in the hands of the Liquidator after all claims filed with him and finally allowed have been paid, shall be by him returned to the New  
2654 Company.

(18) Any payments made by the New Company to the Liquidator under the provisions of paragraph 17 hereof may be made in cash or in securities or other assets satisfactory to the Liquidator taken at a valuation satisfactory to him. If payment is made otherwise than in cash, the Liquidator may, at any time, return any of such securities or other assets to the New  
2655 Company at the valuation at which the same were taken, and the New Company shall substitute therefor cash or other securities or assets as aforesaid.

Proceeds of Assets Held By Conservator or  
Liquidator

(19) The Conservator, or, if the Commissioner is hereafter appointed Liquidator of the Old Company, such Liquidator, shall proceed in such manner and at such time as he deems proper, subject to the provisions of paragraph 20 hereof,

2656 to realize upon the assets still held by him as Conservator or as such Liquidator.

In consideration of the various covenants of the New Company herein contained, and for the purpose of protecting holders of Non-Can Policies and of assuring an equitable division of the assets in liquidation among all policyholders and creditors of the Old Company, the Conservator agrees, for himself and for the Liquidator as his successor in title, that the proceeds  
2657 of any of such assets (other than assets received under the provisions of paragraph 17 hereof) which may hereafter be received by him (or by the Liquidator as his successor in title) shall be used in the manner and only in the manner hereinafter in this paragraph 19 described; and a lien or charge is hereby established upon said proceeds accordingly:

(a) Said proceeds and any part thereof may  
2658 be used by the Conservator, or Liquidator for the payment of any of his costs or expenses of administration, including attorney's fees fixed and approved as provided by law; and any claims having preference in the liquidation proceedings by the laws of the United States or by the laws of the State of California; and thereupon the obligation of the New Company to pay such costs, expenses, or claims shall be released pro tanto.

(b) In the event benefits under Non-Can Policies shall not theretofore have been fully re-

2659 stored as provided in paragraph 14 hereof, a portion of the remaining proceeds (but not exceeding the amount required to provide complete restoration of the benefits under Non-Can Policies) in the ratio which exists between the Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof) whose holders have accepted reinsurance hereunder, and all Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof),  
2660 whether their holders have accepted reinsurance, or have rejected reinsurance hereunder, and have filed claims in the liquidation proceedings, shall be paid to the New Company, and by it transferred to the special fund described in paragraph 14 hereof.

In the event payments have been made hereunder, under any temporary evaluation which is later altered as hereinbefore permitted, a recomputation shall be made; and if as a result thereof,  
2661 it appears that there has been an underpayment from the Liquidator, he shall immediately adjust such underpayment from funds in his hands; but if as a result of such recomputation it shall appear that there has been an overpayment from the Liquidator, the New Company shall repay to the Liquidator from the special fund established pursuant to paragraph 14 hereof when and as there are sufficient moneys therein, (but in priority to the rights of holders of Non-Can Policies who have accepted reinsurance here-



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2662 under to restoration of their benefits) the amount of such overpayment.

(c) Any portion of such proceeds remaining after making the payments described in subparagraphs (a) and (b) hereof shall be used to pay and discharge claims filed with the Liquidator and finally allowed.

2663 (d) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b) and (c) hereof shall be paid to the New Company for the purposes of the special fund described in paragraph 14 hereof, to the extent the same may be required to provide full restoration of the benefits under Non-Cash Policies.

(e) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b), (c) and (d) hereof shall be disposed of by the Liquidator in the manner provided by law.

2664 Mutualization and Disposition of Stock of

New Company

(20) Neither the Conservator, nor, if one be appointed, the Liquidator, of the Old Company, shall dispose of any of the stock of the New Company except as follows:

(a) At any time between July 1, 1946, and January 1, 1948, and thereafter so long as the Conservator or a Liquidator of the Old Company

2665 may continue to hold any or all of said stock, ten per cent (10%) of the holders of participating policies of life insurance entitled to vote at a policyholders' election on a proposal for voluntary mutualization of the New Company, whether those reinsured hereunder or those issued by the New Company (each policyholder for this purpose being regarded as one person regardless of the number of policies owned or amount of insurance held) may request the New Company

2666 to create an Appointing Committee as hereinafter provided to exercise the duties and functions hereinafter specified in respect of a proposed voluntary mutualization of the New Company, in accordance with the laws of the State of California in effect at the time of said request, or, if said laws then so permit, of any one or more departments thereof. Such request shall specify the department or departments of the New Company desired to be mutualized.

2667 Upon the receipt of such request the New Company shall create an Appointing Committee consisting of the then President of the Association of Life Insurance Presidents, the President of Leland Stanford Jr. University, and the Provost of the University of California at Los Angeles, or persons occupying similar positions if their or any of their titles shall have been changed. In the event any one or more of such persons shall refuse or be unable to act, the re-

- 2668 maining member or members shall fill the vacancy or vacancies thereby created by their appointment in writing of another person or persons of similar position and standing. If all of said persons refuse or are unable to act, the Court or any Judge thereof shall, on the application of the Commissioner, designate an Appointing Committee consisting of three (3) persons of similar position and standing. Said Appointing committee, acting through not less than a majority of its members, shall designate a Price Determination Committee of not less than three and not more than five (5) persons skilled in matters of insurance company valuation, which committee, acting through not less than a majority thereof, shall determine whether in their opinion the proposed voluntary mutualization of the New Company, or of the department or departments thereof specified in said request can then be practicably accomplished having due regard to the interests of all persons interested in the New Company. If it be determined that such mutualization is not then practicable no further steps shall be taken in connection with a possible mutualization of the New Company under the provisions of this subparagraph until at least six months after the date of such determination. If in the opinion of a majority of the members of the committee such mutualization is then practicable, the committee shall determine the proper price to be paid upon such mutualization and ap-
- 2669
- 2670

2671 appropriate terms of payment thereof; said determination shall not be made, however, prior to January 1, 1947.

If, at the date of the appointment of such committee the New Company shall have in force Participating Life Insurance written subsequent to the effective date of this agreement in an amount in excess of its Non-Participating Life Insurance written during the same period, one-half ( $\frac{1}{2}$ ) of such excess shall, for the purpose

2672 of fixing the proper price to be paid (but for no other purpose) be deemed to be, and shall be valued as, Non-Participating Life Insurance. If at the time of such appointment, there shall have been transferred from the Participating Department in accordance with the provisions of subparagraph (d) of paragraph 6 hereof, less than ten per cent. (10%) of the then accrued earnings described therein, or, if there shall have been transferred to the Participating Department

2673 any working capital pursuant to the provisions of subparagraph (c) of said paragraph 6, any unpaid balance thereof shall, for the purpose of fixing the proper price to be paid (but for no other purpose) be deemed to be a debt then due and matured. Said Committee shall in its report to the New Company include a plan of mutualization of the New Company, or of the department or departments thereof specified in said request of the policyholders. Such plan shall specify, in addition to any other rele-

2674 vant matters, the price to be paid, the terms of payments, and the persons by whom and the manner in which the right to vote the stock of the New Company is to be exercised pending complete payment of the purchase price. In this connection the said Committee, if it deem it advisable, may provide in the plan for the creation of a voting trust, designate the initial trustees, and make provision for the appointment of their successors. Unless the benefits under Non-Can Policies have theretofore been fully restored and claims against the liquidator fully paid, such plan shall further provide that such mutualization shall not affect the provisions of paragraph 17 or of paragraph 14 hereof or the right of holders of Non-Can Policies to the restoration of benefits from the sources and in the manner therein provided.

2676 The New Company agrees that within sixty (60) days after the making of such report (unless said report shall be to the effect that mutualization is not then practicable) it will mail copies thereof to all of its policyholders entitled to vote upon such plan or plans of mutualization if submitted according to law. If within one hundred twenty (120) days after the mailing of such notice, ten per cent. (10%) of the policyholders entitled to vote upon any such plan or plans (each policyholder being for this purpose regarded as one person regardless of the number of policies owned or amount of insurance



2677 held) shall request in writing the submission thereof, the New Company will promptly submit the same in accordance with the laws of the State of California then in effect. The Conservator for himself and for any successors in the ownership of said stock claiming under him in any manner other than through a sale of said stock pursuant to the provisions of subparagraph (d) hereof agrees to consent and hereby consents as the holder and owner of the  
2678 stock of the New Company to such plan of mutualization. In the event said mutualization plan is adopted, the Conservator, or a Liquidator as aforesaid, shall dispose of such stock in accordance with such plan. The expenses of the foregoing proceedings including costs, fees, and expenses of the Price Determination Committee, shall be borne by the New Company; and, unless the proposed plan of mutualization is consummated, shall be charged to the Participating De-  
2679 partment thereof.

In the event the Price Determination Committee has been appointed as herein provided prior to January 1, 1948, said Committee shall have the power to extend the time within which mutualization may be effected hereunder for such period or periods of time as it may deem necessary for the orderly completion of mutualization proceedings as herein provided.

● (b) If at any time prior to the expiration of the option to mutualize a plan of merger, con-



2680 solidation, reorganization or reinsurance of the New Company is presented to the New Company, or to the Conservator or Liquidator, which in the opinion of the Board of Directors of the New Company cannot be consummated without the elimination of the provisions for mutualization herein contained, the New Company may create an Appointing Committee in the same manner as though the proceeding were under subdivision (a) of this paragraph. Said com-

2681 mittee, acting through not less than a majority of its members, shall designate a committee of not less than three nor more than five persons, skilled in matters of insurance company administration and management. The committee so designated shall, acting through not less than a majority of its members, determine whether or not such plan of merger, consolidation, reorganization or reinsurance is practicable and desirable, having due regard to the interests

2682 of all persons interested in the New Company. If the committee determine that such plan is practical and desirable it shall determine a reasonable time which should be allowed for the consummation of the plan. Thereupon the New Company with the written approval of the Conservator or Liquidator, if then there be one, may submit to a vote of the policyholders (voting in the manner then prescribed by the laws of the State of California relating to voluntary mutualization) a proposal to suspend the mu-

- 2683 tualization provisions of this agreement for the time fixed by the committee, which proposal shall contain a brief description of the plan. If a majority of the policyholders so voting (but not less than ten per cent. (10%) of those entitled to vote) vote in favor of the proposal, said provisions for mutualization shall be suspended for the time so specified and for the sole purpose of consummating the particular plan; and said plan may be consummated within said
- 2684 time free from said provisions and as though no such provisions had ever been contained in this agreement; but unless said plan be consummated within such time said provisions ipso facto shall become fully effective as though there had been no suspension thereof.

- The New Company shall, however, at least fifteen (15) days before any vote of policyholders is called under the provisions of this subparagraph, give written notice to each of its
- 2685 General Agents of the intention to call or take such vote. Such notice shall be deemed sufficiently given if and when it is deposited in the United States mails in a properly stamped container, addressed to such General Agent at his latest address appearing on the records of the New Company.

(c) At any time while the stock of the New Company is held by the Conservator or the Liquidator and has not been sold by him the

- 2686 Old Company shall have the right to pay to the Conservator or to the Liquidator the full amount then required by the New Company to complete the restoration of Non-Can benefits and also the amount required by the Conservator or Liquidator to complete the payment of all his claims and liabilities. In the event the benefits on Non-Can Policies shall have been fully restored from earnings of the New Company, contributions of the Old Company, or its shareholders, or otherwise, and all expenses of and claims against the Conservator or Liquidator of the Old Company have been fully paid, the Conservator or such Liquidator shall, upon order of the Court distribute the stock then held by him in the manner provided by law: provided, however, that if such distribution is made prior to the expiration of the option to mutualize granted in subparagraph (a) of this paragraph 20, the distributees and their successors in the ownership of said stock, shall
- 2687
- 2688 remain bound, until the expiration of said option, to the aforesaid consent to any mutualization plan of the New Company proposed in accordance with the provisions of subparagraph (a) of this paragraph 20.

The Conservator or Liquidator shall cause to be endorsed upon the certificates evidencing the ownership of such stock an appropriate legend giving notice of the said option to mutualize; and the New Company shall cause a similar

2689 legend to be endorsed upon all certificates into which the same may be transferred prior to the expiration of said option.

(d) In the event the Conservator or Liquidator shall at any time determine that conditions are such as to require a sale of said stock, or any thereof, for the protection of the estate in conservation or liquidation, the New Company, or its policy holders, he may sell the same upon order of the Court made after a proper showing of the necessity for such sale upon a full hearing, of which hearing notice shall be given to such parties as the Court may determine are interested therein, and in such manner as the Court may direct.

2691 (e) It is the purpose, spirit, and intent of this agreement that, unless the provisions for mutualization are eliminated pursuant to the provisions of subparagraph (b) of this paragraph 20, the stock of the New Company shall not be sold or disposed of prior to the full restoration of benefits under Non-Can Policies except by proceedings for mutualization, so long as a reasonable probability of completing restoration of benefits under Non-Can Policies shall continue; and also, to the end that benefits under Non-Can Policies may be restored as early as practicable, the New Company declares that it will be its policy, at all times while its stock is held by the Conservator or Liquidator, so far as is reason-

2692 ably practicable in the ordinary and reasonable  
conduct of its business, to endeavor to write new  
Non Participating insurance in an amount equal  
to or in excess of the amount of new Participat-  
ing Insurance written by it.

(f) If the provisions of this paragraph 20, or  
of any one or more of the subparagraphs hereof,  
should be contrary to law or illegal or void, then  
such paragraph, subparagraph, or subparagraphs,  
shall be null and void, and shall be deemed  
2693 separable from the remaining covenants and  
agreements in this agreement contained; and  
shall in no way affect the validity of any of the  
remaining provisions of this agreement.

#### Agents

(21) The New Company hereby assumes all  
obligations of the Old Company under agency  
contracts, provided the other party thereto ac-  
cepts assumption of his contract by the New  
2694 Company and agrees to continue bound thereby;  
provided, however, that the New Company shall  
not assume or be bound by any agreement or  
agreements which the Old Company may have  
made with agents with respect to the payment  
of commissions on any policies after lapsation.  
For the purpose of determining Agent's commis-  
sions, the reinsurance of policies of the Old Com-  
pany under this agreement shall be deemed a  
continuance of existing policies, and not the  
writing of new insurance by the New Company.

2695

Moratorium

(22) A Moratorium shall be and is hereby imposed upon all cash surrender values and policy loans (except loans for the purpose of paying premiums due or to be due within thirty (30) days of the loan date on the same policy or on policies of any form issued with respect to the same person) for a period expiring November 22, 1936; and provided, that the period or extent of this moratorium may be extended or restricted from time to time by ex parte order of the Court made on the application of the Commissioner.

The provisions of this paragraph shall not, however, apply to any increases in values that are accumulated from premium payments or loan repayments which are received subsequent to the effective date of this agreement.

During such period as this moratorium is in effect, the cash surrender option of all policies of the Old Company shall be considered as non-existent, except as provided above, and all policy holders who do not pay their premiums, and who are entitled under their policies to a guaranteed value, will be restored to the automatic non forfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy.



2698

Notice

(23) The New Company shall mail as promptly after the making of the order approving this agreement as shall be reasonably practicable to the insured named in all policies and supplementary contracts of the Old Company in force at the effective date of this agreement, and any assignees thereof of record, a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. There shall also be included therewith a notice referring to the provisions of paragraph 24 hereof with respect to the manner in which election or rejection of the reinsurance and assumption hereby contained must be manifested. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

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2700

Election of Policy Holders and  
Claimants and the Effect Thereof

(24) Policyholders and policy claimants of the Old Company may elect to accept or reject the reinsurance and assumption hereunder of his policy, contract, or claim at any time within

2701 seventy-five (75) days after the entry of the order approving this agreement. The filing with the New Company after the entry of the order of the Court approving the agreement of any claim or proof of loss shall constitute an acceptance of this agreement and a waiver of any right to reject the same. Any policyholder or policy claimant who shall fail to notify the New Company, in writing, of his rejection within said  
2702 period shall automatically be deemed to have assented to and become bound by this agreement, and entitled to the benefits hereof.

The filing of a claim with the Liquidator shall, unless such claim is withdrawn within seventy-five (75) days after the entry of the order of the Court approving this agreement, be deemed a rejection of such reinsurance and assumption.  
2703 The New Company may nevertheless, with the consent of the Commissioner, and upon such terms as the New Company in its sole discretion may desire to impose, permit the withdrawal of a rejection whether or not the period for election herein fixed shall have expired, and permit the person so withdrawing his rejection to accept the reinsurance and assumption herein contained.

Any person electing to accept the reinsurance and assumption herein contained shall thereby be

2704 deemed to have entered into a novation with the New Company, and to have released the Old Company from all claims, liabilities, or obligations with respect to his policy or policy claim hereby assumed or reinsured, whether wholly or partially assumed or reinsured.

Conservator Not Personally Liable

2705 (25) No personal liability on the part of Samuel L. Carpenter, Jr. is assumed under this agreement, but he is bound by the provisions of this agreement only in his capacity as such Conservator or as Liquidator of the Old Company. All undertakings and obligations herein set forth as undertakings or obligations of the Conservator are made only in his said capacities and to such extent as he had authority to make the same, and the Conservator makes no warranty of his authority to make the same.

2706

Liability of New Company Limited Hereby

(26) It is understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other

2707 than an action to enforce the express provisions  
of this agreement, which may be brought by any  
policy holders, policy claimants, creditors, or  
stockholders of the Old Company.

Assignability of Agreement

(27) This agreement and all rights, duties,  
and obligations hereunder shall inure to the bene-  
fit of and be binding upon the respective parties  
2708 hereto, their several heirs, executors, adminis-  
trators, successors, and assigns.

Approval of the Court

(28) This agreement shall not become bind-  
ing upon any party hereto unless and until it  
shall have been approved by an order of the  
Court; and when so approved shall constitute  
an independent agreement, superseding all prior  
agreements; and also an amendment of the  
2709 agreement of July 22, 1936, relating to the rein-  
surance by the New Company of the business of  
the Old Company in such manner that said  
agreement, as amended, shall read in its entirety  
in the language of this agreement.

In Witness Whereof, the parties hereto have  
executed this agreement as of July 22, 1936, at  
the hour of one o'clock P. M. Pacific Standard

2710 Time, but in fact on the .... day of October,  
1936.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By .....

Its Vice-President

(Corporate Seal)

Attest:

.....  
Its Asst. Secretary

"NEW COMPANY"

2711

.....  
SAMUEL L. CARPENTER, JR.

Insurance Commissioner of the State of California,  
as Conservator of The Pacific Mutual  
Life Insurance Company of California.

"CONSERVATOR"

2712

The undersigned, Samuel L. Carpenter, Jr.,  
as Insurance Commissioner of the State of California,  
does hereby give his written consent to  
and approval of the foregoing rehabilitation and  
reinsurance agreement.

.....  
SAMUEL L. CARPENTER, JR.

as Insurance Commissioner of the State of California.

Endorsed: Filed Sep. 25, 1936. L. E. Lampton,  
county clerk; by Guy Stoner, deputy.

2713 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673.

**Order to Show Cause With Respect to  
Rehabilitation and Reinsurance.**

2714 Upon filing and reading the verified petition of Samuel L. Carpenter, Jr., insurance commissioner of the state of California, as conservator of The Pacific Mutual Life Insurance Company of California, and good cause therefor appearing,

It Is Hereby Ordered that The Pacific Mutual Life Insurance Company of California, a corporation, Pacific Mutual Life Insurance Company, a corporation, and all persons interested or claiming to be interested herein either as policyholders or stockholders of The Pacific Mutual Life Insurance Company of California, or otherwise, be and appear before the above-entitled court at the hour of ten o'clock a. m. on October 19th, 1936, in the court room of Department 11, 12th floor, City Hall, in the city of Los Angeles, state of California, then and there to show cause if any they or any of them have, why the said court should not make any and all of the following orders, to-wit:



2716 1. Ratifying, confirming and approving the acts of said conservator in causing to be formed, forming, and subscribing to and purchasing the capital stock of, Pacific Mutual Life Insurance Company, a California corporation;

2. Ratifying, confirming and approving the transfer and conveyances heretofore made of the assets, properties, books and records of The Pacific Mutual Life Insurance Company of California to Pacific Mutual Life Insurance Company;

2717

3. Ratifying, confirming and approving a rehabilitation and reinsurance agreement, dated July 22, 1936, with such amendments as may be proposed prior to or at the hearing hereon as provided in said petition, proposed to be executed by and between said conservator and said Pacific Mutual Life Insurance Company (a copy of which said agreement is attached to the petition of said conservator for the within order to show cause) and authorizing and directing said

2718 conservator to execute and enter into said agreement;

4. Authorizing and directing said conservator to transfer, convey, release, set over and assign to said Pacific Mutual Life Insurance Company all of the assets, properties, books and records of The Pacific Mutual Life Insurance Company of California excepting only (a) the capital stock of Pacific Mutual Life Insurance Company held

2719 by him and (b) the rights or claims, if any, which The Pacific Mutual Life Insurance Company of California may have against any of the present or past officers, directors, or employees, as such, of The Pacific Mutual Life Insurance Company of California or against any other person, firm or corporation, by reason of or in connection with wrongful or illegal acts or omissions, if any, of any of said past or present officers, directors or employees, including rights  
2720 or claims on any fidelity or surety bond or bonds given to or in favor of The Pacific Mutual Life Insurance Company of California to secure the faithful performance by any of its said officers, directors or employees of any of their duties as such;

5. Authorizing and directing said conservator fully and faithfully to perform, carry out and discharge the obligations, terms, conditions and covenants on his part required to be performed  
2721 under the terms of said rehabilitation and reinsurance agreement;

6. Ordering, decreeing and directing that in respect of all Federal taxes finally determined to be due from The Pacific Mutual Life Insurance Company of California, the United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of Pacific Mutual Life Insurance Company as it had against the assets of

2722 The Pacific Mutual Life Insurance Company of California had the within proceedings not intervened; and ratifying, confirming and approving specifically so much of said rehabilitation and reinsurance agreement as relates (a) to the foregoing priority and preference of the United States, (b) to the agreement of Pacific Mutual Life Insurance Company that the United States shall have the same remedies against it and its assets with regard to the collection of said taxes

2723 as the United States had against The Pacific Mutual Life Insurance Company of California, that no provisions of said agreement shall be construed as limiting the operation of said provisions in respect of said taxes, that the assets of The Pacific Mutual Life Insurance Company of California be not so valued, nor the amount of the reserves so redetermined, as to affect prejudicially the rights or remedies of the United States, and (c) to the agreement of all parties

2724 to said rehabilitation and reinsurance agreement that in consideration of the forbearance on the part of the United States at this time to enforce payment of its taxes, the right of the United States to enforce the provisions of said agreement shall be as full and complete as if the United States were named a party thereto;

7. Ordering that this court shall reserve and retain jurisdiction of the within proceedings for the purpose of extending or restricting the period

2725 or extent of the moratorium on cash surrender values and policy loans provided in said rehabilitation and reinsurance agreement, and for the purpose of doing any other act, or making or entering any order, decree, judgment or ruling, required, permitted or requested to be done, made or entered in, or pursuant to the terms of, said agreement;

2726 8. Ratifying, confirming and approving any and all acts, things, or transactions performed, done or entered into by said conservator in the performance of and within the intent and meaning of the directions of this court in the order made and entered herein on the 11th day of August, 1936, that said conservator conduct, manage, transact, and operate the business and affairs of respondent corporation as a going insurance business, and to do any and all things which he may deem necessary and appropriate for that purpose;

2727 9. Ratifying, confirming and approving that certain order permitting the performance of acts and the making of payments necessary to conserve and protect assets and to prevent the waste thereof, dated August 17, 1936.

It Is Further Ordered Hereby that notice of the time, date and place of the hearing to be had on the within order to show cause shall be given in the following manner, to-wit;

2728 1. A copy of this order to show cause shall be posted in three public places in the city of Los Angeles, to-wit: (a) the Justicia street entrance of the Hall of Justice; (b) the Broadway entrance of the Hall of Records; and (c) the Main street entrance of the City Hall; said posting to be done on or before September 30th, 1936;

2. By publishing a copy of the within order to show cause for at least ten consecutive days beginning not later than October 1st, 1936, in the following newspapers of general circulation: Los Angeles Times; Los Angeles Examiner, Los Angeles Evening Herald-Express, Los Angeles Illustrated Daily News, Los Angeles Evening News, San Francisco Examiner, San Francisco Chronicle, and Sacramento Bee;

2730 3. By mailing, not later than October 3rd, 1936, by first-class mail, postage fully prepaid, to the insurance commissioner, or equivalent official, of each state and territory of the United States in which said The Pacific Mutual Life Insurance Company of California did business on July 22, 1936, and of the District of Columbia, a copy of the within order to show cause, together with a copy of said rehabilitation and reinsurance agreement; and

4. By mailing, not later than October 3rd, 1936, to each policyholder and stockholder of The Pacific Mutual Life Insurance Company of

2731 California appearing as such on the books and records of said company on July 22, 1936, a notice of the time, date, place and purpose of the hearing on the within order to show cause substantially in the following form:

2732 "The business of The Pacific Mutual Life Insurance Company of California (old company) is continuing to be conducted by Pacific Mutual Life Insurance Company (new company) which was organized by me for that purpose, in order to safeguard the interests of all policy holders and other persons interested. I have prepared a plan of rehabilitation and reinsurance of the Old Company which plan is set forth in an agreement which I purpose entering into with the New Company, and I have petitioned the court to approve this plan and agreement. The court has set the hearing on my petition before the Superior Court of the state of California, in and for the county of Los Angeles, at 10 o'clock a. m., on the 19th day of October, 1936, in room 1207 of the City Hall, Los Angeles, California, and has directed that you and all other persons interested may appear at that time and place, should you desire, and be fully heard in connection therewith. I have forwarded copies of this proposed agreement, my petition and order of the court to the insurance departments of each of the state and territories in which the Old Company did business and of the District of Colum-



2734 bia, where it is available for your examination if you desire to examine it.

This agreement, among other things, insures the continuance of this business by the New Company on what is, in my opinion, a permanent and sound basis. It also establishes the rights of the policy holders of the Old Company with respect to the New Company and necessarily covers many other subjects. Following an approval of the plan by the court with  
2735 any amendments thereto, which may be suggested at the hearing and adopted by me, and approved by the court, the agreement will be executed and a copy will be forwarded to you.

I appreciate the cooperation which has been given me by the policy holders generally and other interested parties in working out the difficulties with which I was confronted in connection with the affairs of the Old Company.

2736 Insurance Commissioner State of California,  
acting as Conservator of Pacific Mutual  
Life Insurance Company of California."

Said notice may be typewritten, mimeographed or printed upon an ordinary postcard suitable for mailing, shall be addressed to the addressee thereof at his last address appearing on the books and records of The Pacific Mutual Life Insurance Company of California on July 22, 1936, and shall be mailed with postage fully prepaid;

2737 5. By serving, in the manner and according to the provisions of sections 1005 and 1010 to 1013a, both inclusive, of the Code of Civil Procedure of the state of California, upon all parties or persons who have personally entered an appearance in the within proceedings, or upon their attorney or attorneys of record, a copy of the within order to show cause on or before October 3rd, 1936; and in respect of all such persons upon whom service would ordinarily be required  
2738 prior to that date, the time for such service is hereby shortened so that service on or before said date shall be sufficient.

It Is Further Ordered that whenever any service or notice is required hereunder to be made or given by mail, such service, or the giving of such notice shall be deemed sufficient and complete when the notice or other paper or document so served has been deposited in the United States mail, properly addressed and postage prepaid as aforesaid.  
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It Is Further Ordered and Adjudged Hereby that the method of service and giving notice hereinabove set forth is practicable, reasonable, just and sufficient.

Dated: September 25, 1936.

HENRY M. WILLIS,  
*Judge of the Superior Court.*

Endorsed: Filed Sep. 25, 1936. L. E. Lamp-ton, county clerk; by Guy Stoner, deputy.

2740 [TITLE OF COURT AND CAUSE.]

**Answer of Interveners to Petition for Approval of Second Proposed Rehabilitation and Reinsurance Agreement.**

Come now the interveners, Marshall D. Hall and Joseph C. McManus, on behalf of themselves and of all holders of non-cancelable income policies of the respondent, and for answer to the petition of the petitioner, verified September 25, 1936, for approval of the second proposed rehabilitation and reinsurance agreement, deny, allege upon information and belief and pray as follows:

I.

2742 Answering paragraphs IV, V, VII and VIII of petitioner's petition, these interveners have not sufficient information or belief upon the subject to enable them to answer the same, and placing their denial on that ground, deny each and every allegation therein contained, except that these interveners admit that the paper writings referred to in said paragraphs were executed, and/or filed and the orders referred to in said paragraphs were made.

The balance of this answer will be devoted to interveners' answer to the plan, which, for convenience, will be divided into subheadings with letter identifications.

2743 A. Appropriation of Assets for Life Policy  
Holders Which Belong to the Non-Cans.

II.

For many years and until July 22, 1936, The Pacific Mutual Life Insurance Company of California, hereinafter, for convenience, called the "old company", mingled all of its assets and there is no way in which a court could determine which of the assets were held in the reserves for the life insurance policy holders, and which were 2744 held in the reserves for the non-cancelable income policy holders, hereinafter for convenience called the "non-cans".

III.

It was only very recently that any attempt was made to segregate them and they were and are still intermingled, and any attempt by the old company to segregate them was a mere matter of bookkeeping and no actual or legal segregation 2745 of assets was ever made.

It was always represented to all policy holders that all of the assets of the company stood behind their policies.

The policies, themselves, were unqualified promises by the old company to pay upon the conditions named in the policy. They constitute mere choses in action and did not create the relation of trustee and beneficiary.

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IV.

All of the reserves were so intermingled that it is impossible for this court to properly or legally segregate them, and that the life policy holders had no lien upon any of the assets of the company which were separate or different from the lien of the non-cans, and that the entire assets of the company constitute one entire trust fund for its creditors, and that none of the assets of the company constitute a trust fund for any particular group of creditors.

V.

2748

That the said second proposed rehabilitation and reinsurance agreement, marked Exhibit A, and made a part of the said petition, completely fails to take into account the foregoing facts and attempts to discriminate between the holders of non-cancelable income policies and the life insurance policies. Said Exhibit A will hereafter, for convenience, be called the "plan". Said plan has failed to take account of the said rights of the non-cans, and completely fails for that reason.

VI.

It is submitted that two questions should be first determined by this court before the plan can be properly considered: (1) the foregoing question and (2) the question of the insolvency of the old company.

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VII.

That in the event of insolvency, all policy holders, whether life or non-cans, are entitled to a proportionate share of the assets, without preference.

VIII.

2750

The fact that the life insurance contracts may have been profitable contracts to the company and the non-cans unprofitable contracts is entirely immaterial on this question and every policy holder is entitled to his pro-rata share of the assets of the company, without preference, regardless of whether the old company, before its insolvency, happened to have a profitable or unprofitable contract with him.

IX.

2751

That any equitable reorganization or rehabilitation agreement, or any reorganization agreement entitled to the approval of the court must accord the same treatment to all policy holders regardless of whether they are holders of life insurance policies or holders of non-cancelable income policy contracts. The plan completely disregards the rights of the non-cans in this respect and appropriates their share of the assets for the benefit of the life policy holders.



2752 B. Plan Not a Rehabilitation but a Reorganization Agreement and Further General Objections.

X.

That said plan is not a rehabilitation agreement for the following reasons:

1. It does not rehabilitate the Pacific Mutual Life Insurance Company of California, which remains insolvent.

2753

2. It does not follow the statute which prescribes the method of rehabilitating a company.

3. That it is entirely contrary to public policy and to the laws of the state of California to permit the Insurance Commissioner to be the sole stockholder of a rehabilitated insurance company, and, on the contrary, the policy of the state, as declared by its statutory enactments, is to divorce any control by the Insurance Commissioner over a rehabilitated company except as to

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the approval of its investments.

4. That the new corporation, so called under the agreement, should be under the control of its directors under the laws of the state of California, and not under the control or supervision of the Insurance Commissioner, which is contrary to the public policy and to the declared statutory policy of the state of California, and is contrary to the statute.

2755 5. That the said agreement is not a reinsurance agreement in any sense of the word as it provides for a novation.

2756 6. That the plan is a plain reorganization agreement and as such is an attempt by the Insurance Commissioner to substitute for the judgment of the interested parties, namely the non-cans and the life policy holders, the judgment of the Insurance Commissioner as to what the rights of various types of creditors on reorganization shall be, which is wholly unlawful, violates section 10 of article I of the Constitution of the United States, the Fifth Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States, and if ratified by the court, said ratification would be a violation of the Fifth Amendment to the Constitution of the United States and to the Fourteenth Amendment to the Constitution of the United States and that the execution of the agreement violates article I, section 10 of the Constitution of the United States.

2757

C/ General Objections to the Power of the  
Commissioner of Insurance.

XI.

That said plan, if executed, would be entirely void and of no effect, and would not be binding upon the parties thereto, and that the execution

2758 of the same is beyond the authority of the said Samuel L. Carpenter, Jr. as Insurance Commissioner of the state of California and as Conservator of The Pacific Mutual Life Insurance Company of California, and that the execution of said agreement and the transfer of the assets by the said Insurance Commissioner is wholly unauthorized by the Insurance Code of the state of California and is entirely beyond the power of the said Samuel L. Carpenter, Jr. as Insurance  
2759 Commissioner and as Conservator as aforesaid, and the said agreement will be void when executed and beyond the power of the Insurance Commissioner under the statute in such cases made and provided and that the said agreement is of no binding effect whatever on any of the parties thereto and that any acts done pursuant thereto are wholly null and void.

### XIII.

2760 That the transfer of the said assets of the old company heretofore made by the said Commissioner is wholly beyond the power of the Insurance Commissioner and that the same is null and void.

### XIV.

That the said plan and said agreement, if executed, and the transfer of the assets contemplated thereby is entirely void upon the following grounds:

2761 1. That the said proposed contract and transfer of assets made pursuant thereto, if executed, would be wholly null and void.

2. That the court is without power to authorize the making of the said contract and to authorize the ratification of the organization of the new company as provided therein.

2762 3. That under the Insurance Code and under the statutes of the state of California, the Insurance Commissioner has no power to invest the assets of an insolvent insurance company in the stock of a new insurance company, and the court has no power to authorize him to do so.

4. That the Insurance Commissioner has no power under the statute or otherwise to prefer one class of policy holders over another class of policy holders under the guise of reinsurance of certain classes of risks.

✓ 2763 5. That the court is without power to authorize the Insurance Commissioner to prefer one class of policy holders over another class of policy holders under the guise of reinsurance of certain classes of risks.

6. That the court has no power to prefer the holders of the life insurance policies over the holders of non-cancelable income policies in the old company.

7. That the Insurance Commissioner, as Conservator and/or as Liquidator and/or as Insur-

2764 ance Commissioner, is without power to enter into a contract of reinsurance which prefers one class of risks over another.

8 That the company being insolvent the Insurance Commissioner is without power to part with the assets securing the contracts of insurance of the company without reinsuring risks covered thereby, and cannot reinsure only part of the risks:

2765 9. That the making of any orders ratifying or confirming the contract referred to would be unjust, unconscionable and inequitable.

10. That this court of equity would be lending its aid to prefer one class of creditors over another class of creditors.

2766 11. That it is an abuse of discretion for the Insurance Commissioner to transfer the assets of an insolvent insurance company to a new company and entrust the management of the affairs of the new company to a board of directors of his selection and to the same management that led the company into its insolvency, and this is entirely beyond the authority bestowed upon him by statute.

12. That the effect of the said contract and transfer of assets would be to violate section 10, article I of the Constitution of the United States.

13. That the effect of the said contract and the making of the said order and the carrying out of said plan would violate the Fifth Amend-

2767 ment and the Fourteenth Amendment to the Constitution of the United States.

14. That there being a complete mingling of reserves for non-cans and for life insurance policies in the old company, that the attempt by the Insurance Commissioner to apply the assets of the old company in his possession as Conservator for the benefit of one class of creditors is wholly unauthorized, null and void.

2768 D. Necessary Information Omitted From  
Petition.

XV.

1. This is probably the first reorganization plan that was ever submitted to a court for approval without a proforma, complete balance sheet and statement of the new company with full details being presented with it, to enable the court, the interested parties, counsel, or others to properly appraise the plan. It is respectfully  
2769 submitted that probable confusion will result from its absence. Otherwise each party, to visualize the result, must construct one by correlating correctly all provisions of the plan and using figures previously supplied which may not now be used, and one error will change the entire result.

In addition the following data is essential to the proper consideration of the plan:

2. What nominal assets appearing on the books of the life department of the old company



2770 are credited to the participating life department?  
What to the non-participating life department?  
(Par. 7, p. 11) (par. 6, p. 7)

3. What does the Commissioner propose to allocate to each of the three departments under the new plan?

4. What does the Commissioner claim is the value of the book assets so allocated to all three departments of the old company?

2771 5. What is the reasonable anticipation as to the amount of surplus referred to on p. 9 that may be expected to arise from operation of the par-life department based upon the experience of the last five years?

6. What is the reasonable anticipation of the surplus referred to on p. 12 that may be expected to arise from the operation of the non-par life department based upon the experience of the last five years?

2772 7. What is the amount of the reserve that the Commissioner proposes to establish for the various classes of policies as of December 31, 1935, under the language of paragraph 17 (a), segregating the reserve between par-life, non-par life, annuities, disabled non-cans, active non-cans and straight accident?

8. What reserve has been established against the policy of any particular active non-can, if established; is such reserve the measure of the claim referred to as the measure of the claim of

2773 such active non-can if he rejects assumption and reinsurance under the agreement? (P. 23, lines 26, et seq.).

9. If such reserve has not been established against the policy of any such active non-can, when would it be computed and upon what basis would the computation be made?

2774 10. In the matter of filing claims under the conditions that an under payment has been made to the Liquidator on account of the policy of any disabled non-can, where will the balance of the money come from if the new company is subject solely to a liability limited by par. 14 to pay out of the "special fund" and such special fund might not be available until long after claims are filed and approved?

2775 11. If the date for payment of the remaining amount necessary to discharge claims of active non-cans, does not arise until all non-can policies are fully restored, how could such claims be paid at all if non-can policies are never fully restored?

E. Specific Objections to the Plan. References  
Are to the Paragraph, Page and Line of the  
Plan.

## XVI.

That the said plan is objectionable and inequitable upon the following grounds in addition to the general grounds heretofore alleged:

2776 1. The agreement provides for specific allocation and selection of assets, which are placed in trust for the life policy holders. This has the effect of creating a trust in assets which belong equally to all policy holders. (Par. 6, p. 7, l. 12.) The dangers incident upon such selection are forcefully pointed out by the Commissioner, himself, in the letter of the Commissioner of Insurance to the Occidental Life Insurance Company, dated September 18, 1936 (Par. 2 and 3,

2777 p. 2 thereof), in the following language, to-wit:

"A selection of approximately \$185,000,000 of assets out of a portfolio of approximately \$215,000,000 would leave with Pacific Mutual approximately \$30,000,000 of assets least desirable from the standpoint of yield, liquidity and otherwise.

2778 "Variations of 10% to 15% are not at all uncommon in appraisals. A variation of even 5% downward on \$215,000,000, book value of assets would relieve Occidental of obligations to pay any portion of the approximately \$10,000,000 offered to Pacific Mutual to be paid to Pacific Mutual from profits of operation of the reinsured Pacific Mutual business and the proposal would therefore hold out to non-cancellable income policy holders, both active life and on claim; only the speculation of return based upon the outcome of a future appraisal".

2779 2. In the event of future insolvency of the new company under this set-up, the entire expense of the administration ~~of the insolvent estate~~ would now be borne by the non-cans, and the selection of assets would work against them most disastrously.

3. The words "as it may deem available, if any" (p. 8, l. 23) should be stricken out as any profits available to non-cans should belong to them.

2780 4. The requirement that only 10% of the profits of the participating life department shall be reserved for the non-cans is not a fair allocation, and it is also arbitrary and the selection of a figure by the commisisoner. (P. 8, l. 25.)

2781 5. Provision should be made whereby in addition to a definite percentage of the profits, all profits (if more) made by the participating department over and above the requirement for maintaining dividends at the rate paid before re-organization should be available for non-cans, and a higher percentage than 10% should be paid them. All net profits available to the non-cans should immediately be transferred to them, and belong to them.

6. The word "participating" should be inserted before the word "policies" (p. 8, l. 27).

7. The contract from this point (p. 9, l. 27) to the end of the paragraph (p. 11, l. 8) should be completely redrawn. It barters away prac-

2782 tically all of the safeguards and rights which were thought to be reserved to the non-cans.

8. By providing that the assets allocated to the par life shall be held as though they belonged to a mutual insurance company, the plan gives the right to the directors to appropriate any amount they please for overhead, salaries, advertising and the promotion of new business and permits them to declare dividends in excess of what were declared prior to the reorganization and in excess of what other companies are paying, to get new participating business with profits supposed to be accorded to the non-cans. This to be redrawn. (P. 8, l. 8 and 9.) This is inequitable and improper.

9. Even out of the 10% reserved for the non-cans the board of directors are not required to transfer the 10% to the non-can funds (p. 8, l. 20); the surplus (which includes the 10%) not transferred may be used for advertising, promotion and acquisition of new business without regard to the rights of the non-cans. (P. 10, l. 2 and 7.) Not only this, but the moneys available for general corporate purposes may without any limitation whatever be devoted to this end to the detriment of the non-cans. (P. 10, l. 8 to 10.)

10. The non-participating department is subject to the same comment (p. 12, l. 5 to 17). The board of directors have the power to so con-

2785 duct their business that the non-cans will never receive anything beyond the approved schedule; and they can also so conduct their business that the surplus will not be available to the non-cans for such a long period of time that the non-cans will be driven to make settlements unjust to them if they don't drop their policies in the meantime.

11. Accident and Health Department—The same comment is made in the Accident and Health Department. The agreement is not  
2786 drawn in such a way that the non-cans are protected in the building up of a reserve for their protection.

12. Par. 13, p. 17, l. 17 should be so modified that a definite proportion of the losses in the non-cans for disabilities commencing prior to the effective date of the agreement be cut down substantially so as to create some parity or reasonable relationship between the amount payable to insureds for injuries occurring prior to July 22,  
2787 1936 and after that date. There is no reason in equity or common sense why those of the same class who are claimants after the effective date of the agreement should suffer to such an extent as against those injured before that date. This should be determined on an actuarial basis and the cut-down of 25% has been suggested. Theoretically, the non-cans as a group are paying these losses. In a reorganization all classes should take a loss and make concessions to accomplish a result.



- 2788 13. Par. 14, p. 18, l. 8, et seq. is subject to the same vice and gives no rights which are measurable. The board of directors could totally disregard the rights of the non-cans by refusing to appropriate moneys for them, building up large surpluses in their entire discretion, paying large salaries, advertising, spending a large amount for increasing the business of the company on the alleged theory that ultimately the non-cans would get the benefit of it, thereby
- 2789 actually destroying the hopes of the non-cans and forcing settlements of policies and claims and forcing non-cans to discontinue their contracts.

14. The contract is studiously drawn to give the non-cans the least possible rights and those entirely indefinite and not enforceable at any time, except possibly on the final liquidation of the company.

- 2790 15. The effect of the agreement is to wear the non-cans out and force them to drop their policies, or to settle far below their actual rights. It has the appearance of a plan forced upon the Commissioner by the stockholder.

16. After cutting down the rights of the non-cans to a minimum, a clause has been inserted in the plan which entirely destroys their rights under the whole plan (p. 20, l. 4 to 21), as it gives the company the right to sell the Accident and Health Department without provision for

2791 restoration and thereby discharging themselves of all further obligations to the non-cans.

17. The entire question of the right of a non-can claimant not reinsured under the plan to a share of the assets of the company is brought up on p. 23, l. 1 to 7, and comes under one of the main objections to the plan.

18. The same objection is true of p. 23, l. 8. It places the non-cans who fail to elect to accept the plan on a parity with non-cans who compromise their rights by accepting the reorganization plan, and fails to take into account their right to a share of the assets. This question should be determined in advance of the approval of the plan.

19. An attempt is made to turn the company back to the old stockholders after restoration of impairment (par. 19, sub. par. (e), p. 27, l. 18 to 21). The Liquidator will own all of the stock of the new company, and unless provision is made in the plan as to the ownership of this stock by the non-cans when the Liquidator winds up the estate, the stock will be turned over to the old company by operation of law, and hence to the old stockholders. This matter is fully considered in the said subdivision (1) hereof incorporated into this paragraph by reference.

20. Mutualization will impair the rights of the non-cans in so far as it relates to their right to the equity in the company, which is considered

2794 elsewhere. (P. 27, l. 20.) The company has existed for many years without mutualization and should not have any provision which requires it to be mutualized in ten years, which is a long time in the future.

21. The effect of the provision in par. 21, p. 35, l. 28 and p. 36, l. 6, is to pay agents full commissions on all non-can policies, all of which are cut down, some as much as 80%. It should be revised.

2795 22. The agreement contains no provision for an actual voting on this agreement by the policy holders, either as a whole or in classes. It substitutes the judgment of the Commissioner for the judgment of the policy holders, and it arbitrarily determines their respective rights as between them without relation to ascertained figures. (P. 37, Par. 24, l. 17, et seq. to end of Par.) The question of the constitutionality of such a procedure is secondary to the question of whether it is equitable.

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An obvious attempt to avoid the issue of the propriety of an election by the various groups of policy holders is made (Par. 24). It might very well be that a very small minority affirmatively accept reinsurance under the plan and a very small minority approve of it, but yet it would be entirely effective under said par. 24. The method adopted substitutes arbitrary determinations by the Commisisoner for the ascer-

2797 tainment of legal rights, and the effect of it is to deprive the policy holders of their property without due process of law, and to impair the obligations of their contracts.

F. Might Not a New Appraisal Result in the Present Insolvency of the New Company? Are Not the Non-Cans Entitled to Know This Before Sacrificing Their Present Enforceable Rights for the Sake of a Future Reorganization? A Present Appraisal Is Essential.

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#### XVII.

The plan may set up a new company which is insolvent. It provides for no valuation of the assets at this time or in the near future. It provides for the arbitrary right of the board of directors to take the good assets and put them in the Life Department and leave the poor assets and the questionable assets for the non-cans.

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Until an appraisal is made of the assets, there is no way of determining whether the new set-up is solvent even on the reduced basis of the non-cans, especially in view of the fact that the Convention Examination discloses many irregularities and the existence of many assets which need careful present appraisal.

The Commissioner, himself, has very properly and forcibly raised this very question. In his said letter to the Occidental Life Insurance Company, dated September 18, 1936, summarily

2800 rejecting their offer dated September 11, 1936, the Commissioner states as above set forth in par. XVI hereof.

The same \$185,000,000 of choice assets referred to by the Commissioner in his said letter could be selected for the life policies and it might have the effect of leaving the non-can department insolvent, and would certainly possibly leave the same less desirable assets from the standpoint of yield, liquidity and otherwise in the assets for  
2801 the non-cans.

G. The Provision for Interdepartmental Exchange of Assets Should Be Eliminated.

### XVIII.

The provisions of the contract that assets are interchangeable between the three departments after making an inflexible allocation of assets to the three departments is conflicting and illogical. The agreement transfers assets to the participating life department, for example, and states that they shall be for the sole benefit of the participating life department, and it then provides that the assets can be interchanged with assets of other departments within the discretion of the board of directors. This gives the power of permanently keeping the doubtful assets in the non-can reserve. As they become good in the non-can department, they could be swapped for life assets which had become non-liquid or doubtful.

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### H. Other Doubtful Features.

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The plan provides that the existing assets shall be transferred to the credit of the three departments in the new company. This apparently places all life reserve assets beyond the reach of creditors and is, of course, of doubtful constitutionality if it has that effect. Upon this set-up the new company would probably find itself unable to pay the claims assumed to be made by creditors and non-cans who refuse to consent to the new plan, the number and amount of which we have no present means of knowing, and no provision is made to cure this. If the assets transferred to the new company in the non-par life department are necessary reserves for the non-par holders, there is then no surplus in the non-par life department with which to pay the creditors of the old company who file, nor would there be any surplus in either participating life department or the non-can life department after paying such general claims.

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Par. 17 provides a limitation as to the amount of claims filed against the Liquidator that would be paid by the new company.

### XX.

The rights of the non-cans are prejudiced by the provisions on p. 23 of the plan with respect to the filing of claims whereby the provision is inserted that the measure of the claims of the non-cans who do not approve is to be determined



2806 to the satisfaction of the liquidator and there is an attempt made in that paragraph to bind all non-cans who do not accept the plan and file claims to the reduced schedule of benefits set forth in par. 11. The insertion of the provision, aside from the question of its validity, is illustrative of the completeness with which the rights of the non-cans are impaired.

2807 I. The Equity In The New Company Belongs To The Non-Cans; It Is Given By The Plan To The Stockholders Of The Old Company.

XXI.

The legal effect of the entire plan is to place the entire risk of loss of the new venture upon the non-cans and from their reserves, and give the entire equity or profit in the venture to the stockholders. The risk of loss to one group—the profits to another.

2808 There is obviously a risk of loss in any commercial venture. The new company may be successful, and it may not. Indeed, upon an appraisal it might be found to be insolvent, or nearly insolvent under the present plan, and assuming that it is solvent, poor management, poor business or hard times might make it a failure.

It is the rule, both in law and in business that those who take the risk of the loss are entitled to the profits.

2809 The risk of loss is entirely upon the non-cans. If the participating department and the non-participating department of the life business are made solvent under the plan, as they are, then the entire capital for the new company comes out of the non-can reserves.

Moreover, they are contributing in addition to this capital out of their depleted reserves, their fair share of the assets of the old company,  
2810 which upon liquidation would belong share and share alike to them and the life policies.

## XXII.

The report of the Convention Examination of the Pacific Mutual Life Insurance Company as of December 31, 1935, now on file with the court is incomplete as it omits to include the supplementary report of Convention Examination of the Pacific Mutual Life Insurance Company of  
2811 California as of December 31, 1935, signed by representatives of the states of California, Louisiana, Ohio, Texas, Virginia and Washington, the contents of which are essential to a proper consideration of the plan and in order to have an understanding of the Convention Examination on file, it is necessary to examine the Supplemental Report of the Convention Examination referred to, and these interveners beg leave to refer to it upon the argument of motion and it is incorporated in this answer by reference.

Under the heading "Management Investment" the report says:

"Certain transactions of the Company, which came to our attention were of such a nature, as to cause us to make an investigation of the entire management of the Company. This investigation covered careful scrutiny of a number of mortgage loan and collateral loan transactions, as well as those matters covered by our comment on Employees' Stock Syndicate.

"Our first investigation had to do with the responsibility for inadequacy of non-cancellable reserves. In this connection we took the sworn testimony of the Company's Actuary, Alfred Hann, which indicated that he repeatedly called Mr. Cochran's attention to reserve inadequacies and that no action was taken. In support of his testimony Mr. Hann produced letters written to Mr. Cochran regarding this matter together with Mr. Cochran's reply thereto. This investigation clearly indicated that not only did Mr. Cochran, then President of the Company, disregard the warning but thereafter consented to the payment of cash dividends to stockholders in amounts exceeding \$5,000,000.00.

"We found through our investigation that numerous mortgage and collateral loans were made without first investigating the security, that in a number of cases the loans were made

2815 where certain executive officers or directors had a substantial interest in the borrowing corporation. In many instances the collateral securing collateral loans was stock of corporations in which certain officers were substantially interested. Many of these transactions were, in our opinion, in violation of Sections 1101 and 1104 of Article 17, Chapter I of the Insurance Code, State of California:

2816 "In addition to the above, we found instances of where amounts due on collateral loans were forgiven where the borrowers were personal friends or relatives of officers of the Company, as well as many instances where interest was reduced to a low rate without apparent justification.

"Many of these transactions were put through upon the direct order of an executive officer, and while members of loan committee protested, it did not prevent these transactions.

2817 "Nearly all of the investment transactions mentioned above were in violation of rules and regulations laid down for the governing of the investment policy of the Company.

"It is imperative that the present officers of the Company carefully study the information contained in the working papers of this examination, and take immediate action against those responsible for this condition."

2818

XXIV.

It is alleged upon information and belief that these statements are true. It is moreover alleged upon information and belief that nothing was done about any of these things by the management of the company up to and including July 22, 1935, when the company went into the hands of the conservator.

XXV.

2819

It is a fundamental principle that those who seek equity must do equity. Before any consideration is given to the stockholders under this plan, they should be required to restore to the company the \$5,000,000 which they received in dividends, and if the company is insolvent then the decree and the plan should specifically provide in some appropriate manner that the stock of the new company shall be properly distributed to the non-cans, who are taking the risk of loss in the new venture entirely alone.

2820

When a sufficient number of non-cans fall by the wayside on account of the unbearable burden imposed by the plan, the stockholders will benefit by their own wrong, and will probably interpose the statute of limitations to an action by the liquidator to recover these dividends which properly belong in the reserves.

- 2821 J. Neither The Stockholders, Nor Their Representatives, Nor Any One Of The Old Management Should Either Now Or In The Future Have Any Part Of The Management Of The New Company, And The Plan And Decree Should So Provide.

XXVI.

- 2822 The plan should provide in some appropriate manner and the court should decree that the funds of this company should neither now, or in the future at any time be managed or handled by the old stockholders or their representatives, or any one of the old management.

- 2823 Ample evidence is contained in the said Supplemental Report of Convention Examination of numerous irregularities in the conduct of the business of the company by many of the old management, and no opposition to it in the old management ever resulted in any action. The old management, those of whom were not worse, were either careless or ignorant and so far as can be ascertained no steps were ever taken to right the wrongs that were done. Any injustice that might possibly be done to any innocent party must necessarily be weighed against the necessity for both safety and absolute public confidence in the management of the new company.



2824 The sole responsibility for the old management is upon the stockholders, who controlled the company and who were comparatively few in number.

### XXVII.

Annexed hereto and marked Exhibit B is an excerpt from said Supplemental Report, which is made a part hereof and which fully indicates the practices which were engaged in, and the culpability of the entire management either for mal-

2825 feasance of those who were active and non-feasance of those who were passive. The resultant losses have never been appraised.

### K. Plan of Non-Cans.

### XXVIII.

Besides the modifications above urged in the plan of rehabilitation, there is annexed hereto, marked Exhibit C, a proposed outline of modifications to the plan of rehabilitation and reinsurance which will assure to the non-cans the ultimate ownership of the Pacific Mutual Life Insurance Company, which they are entitled to as above set forth. This plan may require some modifications or may have to be materially altered, but its main lines should be incorporated in the plan, even tho the new non-can company cannot be set up as a going concern but will have to remain in the hands of the Liquidator until it is restored to full solvency under the plan

2827 L. Additional / Later Amendments To Plan.

XXIX.

The interveners reserve the right to suggest amendments to the plan other than those above set forth.

M. Occidental Life Insurance Company  
Proposal.

XXX.

2828 The Occidental Life Insurance Company recently submitted to the Commissioner a proposed plan of reinsurance which involved the reinsurance of all policies on the basis set forth in the proposal. This proposal was summarily dismissed in a letter by the Commissioner without any attempt by the Commissioner to hold conference with the Occidental representatives to ascertain whether the Commissioner's objections to the proposal could be met or a compromise arrived at, altho the president of the Occidental  
2829 has stated that he offered to visit the Commissioner to discuss it, and altho the plan in many respects offers greater protection to the policy holders than this plan, and a large and solvent insurance company, The Occidental Life Insurance Company, offered to have placed at least \$3,000,000 additional capital into its own company, adding that much more capital behind the reinsurance contract in addition to its then capital, surplus, undivided profits and undisclosed reserve of about \$3,000,000.

2830

XXXI.

It is submitted that under no circumstances should this plan in any form be finally approved until it is compared with the proposal of the Occidental Life Insurance Company, after every attempt has been made to induce the Occidental to improve its offer and meet the Commissioner's objections, and a liquidation order made so that it may be properly submitted.

2831

N. Summary and Conclusion.

XXXII.

The weak spots in this unfortunate company must now be exposed to the light of day. Any ostrich-like procedure now will only result in the future insolvency of the new company and a repetition of the present debacle.

2832

There is a possibility that the new company as set up by the plan will have insufficient assets. This is true if, even on the reduced basis for non-can benefits, the actual value of the assets left for the non-cans (inclusive of the \$3,000,000 capital and surplus) is not equal to the book value along the lines pointed out by the Commissioner in his letter of Sept. 18th to the Occidental. Only by present careful appraisal can this be ascertained. The plan must provide for immediate appraisals.

- 2833 In setting up a plan in which the life assets are trustee'd, no judgment on the equity of the plan is possible until we find out the appraised value of the assets assigned. It may be that the worthless, doubtful and least promising will be left for the non-cans. From the condition of the collateral loans and the mortgages, the equity or inequity of the plan may much depend on the question. From the Convention Report it is perfectly apparent that we can pay but scant attention to the book value of many of them.
- 2834

The right of the non-cans to their share of the assets is disregarded by the plan. The non-cans are asked to surrender all their right to their pro-rata share of the assets to accomplish a re-organization, and to accept future profits in lieu thereof—to take a future profit and risk of loss instead of a present asset.

2835

Yet the provisions for the nonpar protection are so hedged in with exceptions and reservations that they afford them small protection with respect to the securing of those profits. The plan entirely loses sight of its main purpose—to salvage assets and restore non-cans, not to spend their money to build a vast business at the expense of non-cans for the future benefit of the stockholders. Even all non-par profits

2836 may be held by the board of directors for future anticipated losses on non-par life, altho adequate reserves are set up for them, and even if such funds go into the special fund available for corporate purposes.

2837 And finally the amount available at any time for restitution of non-cans is subject entirely to the discretion of the board of directors, who, under the plan, are only obliged to devote the amount not reasonably required (in their sole discretion) for the reasonable, proper and profitable conduct of the business as a going concern. They may defer non-can obligations indefinitely into the distant future.

2838 In other words, the fund to be created out of profits for the non-cans is not primarily hall-marked for them but to build up a great business for the stockholders, at the expense of the non-cans. The participating policy profits, constituting the greater part of the business, go to the present participating policy holders except as to the theoretical 10% thereof.

The fact that ultimately the profits will inure to the benefit of the non-cans is theoretically their protection—a mirage until liquidation.

2839 Nor are the non-cans, or indeed the life policy holders, accorded any representation whatever on the board of directors.

The company has its board of directors, and the Commissioner is not a member thereof. Under the law it, and not the Commissioner, will manage it, even tho his approval of their acts may be required.

2840 The unanimous support by the shareholders of this plan as against their bitter opposition to the previous plan is well founded.

They can foresee that the non-cans while taking the entire risk of the new venture get none of the profits after (theoretical and ultimate) restoration, and that the discouraged non-cans will drop out, either by the settlement route if

2841 they are in claimant because "hope / deferred  
maketh, the heart sick" or from actual despair if they are not in claim, leaving the few remaining fully restored. The company will then go back to the shareholders free from most of the non-can claims and in full enjoyment of the fruits of what would amount to a legal fraud perpetrated upon the non-can policy holders.

We would have this anomalous result that the old stockholders, already having unlawfully



2842 profited to the extent of over \$5,000,000 out of the coffers of the non-can reserves would, without present risk of any capital and without being required to make present restitution, have the company restored to them, free from liability to the greater part of the non-can policy holders, who will have thus lost to the stockholders the assets to which they only are entitled, having paid them in premiums to the old company.

And the same small group in control during 2843 this debacle will in the future be in control of the vast funds of the new company after demonstrated unfitness to handle them.

Wherefore, interveners and non-cancellable income policy holders pray:

1. That the petitioner's plan be *disproved* as submitted.
2. That it be amended in the respects indicated.
- 2844 3. That the proposed plan, Exhibit B, be accepted.
4. That the prayers of this answer be granted.
5. For such other and further relief as to the court may seem just in the premises.

H. S. DOTTENHEIM,  
*Attorney for Interveners and All Non-Cancel-  
lable Income Policy Holders Not Otherwise  
Appearing by Counsel.*

2845

EXHIBIT 'A.

Extracts from:

Supplemental Report of Convention Examination of the Pacific Mutual Life Insurance Company of California as of December 31, 1935

Dated: July 22, 1936.

States Represented: California, Louisiana, Ohio, Texas, Virginia and Washington

2846

"Real Estate owned, exclusive of Home Office property, consists of 92 parcels, of which number 64 are held by the Life Department and 28 by the Accident Department. Of this number 77 parcels were acquired by foreclosure subsequent to January 1, 1933,—51 by the Life Department and 26 by the Accident Department.

2847

"The value of the real estate acquired by foreclosure, as carried on the Company's books, includes not only the balance of principal, advances for taxes and insurance prior to foreclosure, taxes assessed prior to date of acquiring title, and cost of acquiring title, but also such items as premiums paid for title policies, and in a few cases, past due interest, pro-rated insurance premiums, amounts paid for furniture and fixtures and other items which should properly be charged to expense.

"Since the Company sets up a Contingency Reserve to take care of losses on real estate, as

2848 well as on other asset items, no appraisals were made of properties acquired by foreclosure. Of the total Contingency Reserve, we have allocated \$730,000.00 to cover possible gross losses on individual parcels of real estate owned, and since no allowance has been made for anticipated profits on other parcels, this amount should be ample; \$420,000.00 of this item is assigned to the Life Department and \$310,000.00 to the Accident Department. Further comments as to allocation of a part of the Contingency Reserve to cover probable losses incurred from Mortgage Loans will appear under that subject. (p. 37)

Comment No appraisal was made. Hence no way of telling whether sufficient reserves carried.

2850 "In the comments on mortgage loans in the report of the previous examination, it was remarked that the Company in several instances made mortgage loans to other companies and corporations, some of whose officers or directors are also officers and directors of this Company. We remark briefly upon two such loans which have been foreclosed and are now carried in real estate.

"R. E. O. Ax 35, formerly M. L. Ax 991, is an unimproved lot at Long Beach, California, originally the site of a hotel which has since been demolished. The loan was first made January 14, 1925, for \$375,000.00 to a corporation sev-

2851 eral of whose officers, directors and stockholders were also high executive officers or directors of this Company. The loan was increased, either by new notes or advances to pay taxes and other expenses, until on January 1, 1933, the balance outstanding amounted to \$620,417.49. The interest rate, originally 6%, was reduced to 5% when the loan was renewed August 27, 1932, and to 4% on January 31, 1933, by action of the Executive Committee. One quarterly payment  
2852 was made at this rate, February 28, 1933, and thereafter flat sums were accepted at intervals in lieu of interest due in considerably larger amounts. When the loan was foreclosed December 17, 1935, the principal balance, including advances, amounted to \$669,301.08. In the process of foreclosure the Company secured a deficiency judgment for \$41,181.76, which was compromised as of December 31, 1935, for \$4,525.95, this amount constituting the sole remaining asset of  
2853 the borrowing corporation. When the corporation was dissolved early in 1936, the Company owned 1486 shares of its stock, acquired, 998 by purchase and 488 from collateral loans, at a total cost of \$44,901.70. After foreclosure expense and taxes assessed prior to foreclosure, amounting to \$7,850.56, and after crediting the deficiency judgment of \$4,525.95, the book value of this property as of December 31, 1935, was \$672,625.59. By applying an interest rate of

2854 6% to the balance as of January 1, 1933, and to all subsequent advances, but without making an exact calculation, and after crediting to the resulting amount all interest actually received, we find that during the three-year period the Company suffered a loss in interest on this transaction of approximately \$95,000.00. The Company's estimated sale price on this property is \$572,000.00.

2855 "R. E. O. 129, formerly M. L. 5754, consists of a lot in San Gabriel, California improved with a large brick, steel and concrete theater building and a one-story brick building. The loan was first made to the Mission Playhouse Corporation December 8, 1926, for \$225,000.00 at 7% interest. The roster of the officers and directors of the corporation discloses that several of them were officers or directors of the Company. Without commenting upon the history of the loan prior to January 1, 1933, other than to say that 2856 it was in "hot Water" evidently for some years, the principal by that date had been increased by advances to \$267,275.64. The Company acquired the property by grant deed dated March 6, 1933, in lieu of foreclosure. The advances and other expenditures which have been capitalized during the three-year period amount to \$3 100.46, giving this property a book value as of December 31, 1935, of \$270,376.10. Expenses for taxes, repairs, insurance, and other items, after

2857 deducting all rental income and other receipts, amounted to \$20,946.89 during the three-year period, so that the actual cost is \$291,322.99. There is a further potential loss of approximately \$56,000.00, arrived at by applying the contract interest rate of 7% to the principal and advances outstanding on January 1, 1933. The Company's estimated sale price is \$170,000.00, and it is doubtful, owing to the character of the improvements, if it can be sold at any time in the

2858 near future. While the corporation in this case was apparently organized for civic and patriotic purposes, and while the same reasons no doubt influenced the Company officials responsible for making the original loan, it is extremely difficult to believe that a loan of this character would have been made, had there not existed at the time the close relationship between the officers and directors of the Company and of the Corporation.

2859 "Assuming the Company's sale price as indicating a fair market value, on December 31, 1935 the actual or potential loss on the two properties including the loss from interest not received and the loss on stock owned in one of the corporations, is estimated at \$418,000.00." (p. 37 to 39).

Comment: The "previous report" referred to should be made available to ascertain the amount of these loans and the circumstances.



2860 "The company's investment in Mortgage Loans on Real Estate, consisting of 1,425 notes or series of notes, amounted to \$88,379,312.85 as of the date of this examination." (p. 42).

"It cannot be said that the existence of interlocking directorates motivated the making of all loans shown above, but the making and servicing of certain of these loans clearly shows that excess amounts were loaned and concessions variously made, upon recommendations of such interested officers and/or directors. Interest reductions shown above do not reflect the true returns, as explained in a preceding paragraph, for in at least one instance, interest was accepted at the rate of  $2\frac{1}{2}\%$ . The aggregate loss to this Company by virtue of interest reductions and concessions to December 31, 1935 approximates \$94,000.00. This however, does not take into account the fact that in the making of certain of the above loans interest was contracted at less than prevailing rates. It should be noted that the Company's largest individual loan, which stands at a principal balance of \$2,210,000.00, is included in the foregoing schedule. It came into the Mortgage Account in 1935 through conversion of a bond issue owned by the Company and is secured by 32 improved properties variously located in the State of California. Simultaneously, with the making of the above loan, a loan of \$2,000,000.00, also included in the fore-

2861

2362

2863 going schedule, was made to the same corporation on 28 properties, also variously located in California, for the purpose of retiring a bond issue not previously owned by this Company. This was, in effect, a loan for \$4,210,000.00, divided as indicated above. The security appears ample; however, the amount loaned to one corporation is large. The last Convention Examination Report called attention to the fact that such loans as shown in this schedule were made in

2864 contravention of the intent of the statute relating to loans to officers and/or directors, and it is regrettable to note that the practice was not at that time discontinued.

"The continuance of this practice is evidenced in the making of Mortgage Loan No. 7551, which came into the Mortgage Account in the principal amount of \$250,000.00 on August 28, 1934, and was made for the purpose of paying off a mortgage loan owned by a corporation in

2865 which a director of this Company is president and principal owner. The debtor corporation in this transaction is principally owned by three officers and/or directors of The Pacific Mutual Life Insurance Company. Not only can this loan be criticised for the reasons above stated but it was made in violation of approved and adopted mortgage loan regulations which prohibits the making of such a loan on farm property, and at an interest rate of 5% which was at that time below prevailing rates.

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2866 "No such loans have been made since the present management came into power, and a further recurrence is not to be expected. In an effort to liquidate these loans, renewal and/or extension requests have been denied.

"A great deal of care is being exercised by the Mortgage Loan Department in conserving its interest in all loans. Because of the fact that in prior years investigation of underlying security was not made prior to commitments, numerous loans have either been taken into the Real Estate Account or have become troublesome to the extent of requiring constant supervision by the mortgage loan department. In all such instances the Company has exercised its rights under deed of trust provisions, collected all income by virtue of lease and rental assignments and otherwise supervised and managed these properties as fully as if actually owned as real estate.

2868 "A striking example of the mortgage loan department's handling of such cases is reflected in the history of Loan No. 7375, which stands at a principal balance of \$1,488,894.49 and is secured by a subdivision in Los Angeles, California. The original amount of the loan was \$830,000.00. The security evidently was not proper for such a loan at the time the commitment was made on March 18, 1930. It may or may not be significant that certain officers of this Company

2869 owned stock in the borrowing corporation at the time the loan was made. Subsequent to the making of this loan the Loan Committee in an effort to strengthen its position and to avoid foreclosure recommended the advancement of additional funds for development purposes and the Executive Committee gave its approval. For the past three years improvements have been made which include construction of a theater, two mercantile buildings, numerous multiple and single dwell-

2870 lings, street improvements and the acquisition of additional acreage with funds advanced by the Company. On December 31, 1935 the principal balance was allocated in the following manner:

Unsold lots	\$ 728,710.00
Advanced for construction	271,586.50
Undeveloped acreage	147,538.83
Trust deed assignments	240,859.87
Sales contracts	100,199.29

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\$1,488,894.49

2871

A fair appraisal of the security shows the loan to be well margined but principal recovery can come only through orderly liquidation as the debtor company is not financially able to service the loan. The Company is supervising and managing the sales program to the extent of setting sales prices, approving all sales and disbursing all funds received from both sales and rents. Practically all interest credited on this

2872 loan during the past three years was paid by the Company from funds provided, but unadvanced, when the loan was last renewed, increased and extended. No principal loss is to be expected, but a great deal of time can be charged to mortgage loan department supervision.

2873 "Another example of the mortgage loan department's attempt to conserve the assets of this Company, is fully explained in its handling of Loan No. 7689. The history of this item dates back to the purchase of a large amount of leasehold bonds issued by a Los Angeles club, which later defaulted in interest payments, as well as lease obligations. The Company, owning in excess of \$600,000.00 of said bonds, in an effort to avoid a total loss, acquired fee title by purchase thereof and payment of \$360,040.00 therefor.

2874 "At the trustees' sale a member of the loan committee acting for the Company, bid in the outstanding bond security for \$308,935.60. At the same time the Company directed the formation of a new club, into which were inducted members of the old club, advanced additional funds for the purpose of acquiring additional club property, and passed title of all property owned to the new club, which in turn executed notes and deed of trust in favor of this Company.



2875 "A detail of items comprising the present loan in the amount of \$1,263,000.00 follows:

Fee title to land purchased	\$ 360,040.00
Leasehold bonds owned	621,000.00
Purchase price of bonds at trustees' sale	308,935.60
Accrued interest on bonds	17,664.00
Advanced for purchase of additional property	125,000.00
Unadvanced funds	16,660.40

2876 1,449,300.00

Credit on bonds owned 186,300.00

Amount of note \$1,263,000.00

2877 "In order to receive the cooperation of the old club officers and members, the Company recognized certain unsecured notes to banks amounting to approximately \$252,000.00, by allowing interest to accrue thereon at 4%, the same rate the Company's notes provide. Although this loan is physically well secured, interest payments and principal reductions are contingent upon successful management by club officers as the security is a one-purpose building. The files reflect efficient handling of this difficult problem.

"Loans numbered 7121, 7184, 7275, 7450, 7491, 7569, 7765, although not requiring the time and attention as the loans previously discussed, are giving the mortgage loan department a great deal of trouble of the same nature. The

2878 aggregate principal balance of these loans, including numbers 7375 and 7689, is \$6,261,463.40. Members of the loan committee have successfully worked out similar investment problems and your Examiners are of the opinion that these are being efficiently and intelligently handled.

“Four loans in the aggregate amount of \$217,818.21 were in process of foreclosure as of the date of this examination and the company has acquired title to real estate of a book value of 2879 \$852,491.95 to June 30, 1936. The above loans and properties foreclosed thus far in 1936, in the most part, occasioned the mortgage loan reserve carried on the liability page of this report. The Company will undoubtedly take title to other loan security prior to December 31, 1936.

“Loan No. 7201 to which attention was invited in the report of the last convention examination, with the statement that it should have been foreclosed prior to December 31, 1932, is still in 2880 the mortgage loan account and now stands at a principal balance of \$401,752.32. The Company has had the benefit of all income from the property for the past three years but said income was not sufficient to pay current expenses; therefore, no interest could be collected for the period. Your Examiners can see no reason for further delay in taking title to the property and exercising rights under a \$40,000.00 personal guarantee.

- 2881 "A majority of trouble loans came into the mortgage account by commitments of loan amounts and terms before proper investigation of the security was made and before being submitted to the loan committee. The files reflect numerous instances of this irregular practice. The files also indicate that in the making of certain loans for construction purposes the borrower was required to purchase materials from, and to place fire insurance with firms designated
- 2882 by an officer who was at that time in charge of the mortgage loan department.

"Loan No. 7760, standing at a principal balance of \$1,302,786.36 on December 31, 1935, was made after such requirements had been met. This loan was made on June 28, 1927 for \$1,350,000.00 to mature August 28, 1947 and to bear interest at 6%. As in many instances the appraisal was made to show a 50% loan in order to comply with statutory requirements. On February 28, 1932 the loan was renewed and extended to August 28, 1949 and the interest rate reduced to 5½% with the notation that it should be collected at the rate of 5% to August 28, 1934. The loan immediately became delinquent and in the latter part of 1934 the mortgage loan department entered the picture and assumed supervision of management in its entirety. The Company agreed to make additional advances for specific changes and improvements on July 1,

2884 1935, at which time the loan was again renewed and extended to July 1, 1955. The interest rate was again reduced and the deed of trust now calls for interest to be paid at the rate of 4% for two years; 4½% for the next three years and 5% thereafter. All terms of the last renewal agreement are being met promptly. The Company not only suffered a loss of interest, but a great deal of expense was incurred before the loan was finally put in good standing.

2885 "During the depression years the Company made it a practice when renewing and extending loans to provide funds and hold same in anticipation of future delinquencies. This practice in some instances served to increase these excessive book values and at the same time show interest currently paid which would have otherwise been delinquent. This practice has now been discontinued.

2886 "The Company keeps currently informed as to the status of taxes on security covered by its trust deeds, and in instances where the mortgagor is unable for any reason to make such payments the money is advanced, and charged to the principal balance of the loan, and in most instances draws interest at the same rate as the original loan. The total balance of advances for taxes and other necessary expenses on December 31, 1935 amounted to \$288,694.69 in the life department and \$118,427.47 in the accident and health division.

2887 "The Company's experience in sub-division and institutional loans has been unfavorable, as a result, the present loan committee has gone on record as opposing the making of any such loans in the future.

"A definite policy of placing actual values on properties for the purpose of making new loans had its advent at the time the present loan committee gained full control over such matters.

2888 "The reserve for mortgage loans losses shown on the liability page in this report was determined by a careful check of individual loans and is allocated to departments in the following manner:

Life	\$1,022,724.94
Accident and Health	130,000.00
	<hr/>
	\$1,152,724.94

2889 "In instances where appraisals were found to be excessive the value of loan security was determined from reported income, as nearly as possible. It is recommended that all appraisals be brought up to date." (p. 48 to 54)

"Collateral Loans. The rate of interest charged on collateral loans has been consistently lowered during the past three years, due apparently to changes in economic conditions, and in a number of cases it was found that the Company would accept compromise settlements of interest at the end of the year, in order to avoid showing past due interest in its annual state-

2890 ments. This latter practice, if there is any possibility of eventually securing payment of the past due interest, cannot be commended.

2891 "In the report of the 1932 examination of the Company, the examiners commented upon the fact that in several cases, amounts had been written off of loans when renewals were secured, and the old notes returned to the borrowers, who were thus relieved of further obligation on the portion not included in the new notes. The examiners further stated that 'it may therefore conceivably eventuate that a borrower would, on an advancing market, be placed in a position to extinguish his obligation to the Company and receive the balance upon disposition of collateral security, notwithstanding the fact that he actually owes the moneys to the Company'. Although this conclusion has been amply justified by succeeding developments, the Company has continued the practice during at least the first 2892 two years of the period covered by the present examination.

"In analyzing this feature, loans which have been retired by the Company taking over the collateral security have not been considered, as in such cases the amount written off would not affect the eventual recovery. It was found, however, that among the loans paid in cash and the collateral returned to the borrower, that the sum of \$43,078.97, including \$847.25 written off



**2893** prior to January 1, 1933, has been lost in this manner, with no hope of future recovery from the borrowers, the notes having been returned to them. Included in the same category is \$16,003.93 which has been charged off of loans which still remain unpaid. The sum of these two items, \$59,082.90, has disappeared entirely. To mention two particularly arresting examples, on Loan No. 2939, \$31,826.72 was charged off from the unlisted portion in 1933, and on Loan No. 2942,

**2894** \$5,000.00 was charged off in 1935, in the latter case upon an agreement with the borrower that he further reduce his loan by a cash payment of \$2,500.00. Both loans, except the amounts charged off, were paid in full in 1935, and in each case the amount returned to the borrower

in

in cash or securities, / excess of the balance discharged, was more than double the amount previously charged off. While it is not believed

**2895** that such practice will continue in the future, due to a change in management and policy, it is impossible to pass over this phase without well merited criticism. Especially in view of the comments contained in the report of the previous examination, the actions of former high executive officers and directors in ordering or condoning charge-off of loans or compromise settlements of interest cannot be too severely condemned.

"It is interesting to note that of the 114 loans discharged during the three years covered by

- 2896 this examination, 52 were paid in cash, 57, including 4 previously carried in unlisted assets, by release of the collateral to the Company, or by sale of the collateral at public auction with the Company as purchaser, and 5 by direct or indirect transfer to mortgage loans. Since the Board of Directors of the Company, by resolution passed on August 14, 1933, decided to make no more collateral loans, only two new loans have been made during the three-year period.
- 2897 One loan for \$44,000.00 was transferred to mortgage loans in 1934 and was returned to collateral loans in 1935 in the reduced amount of \$43,000.00." (P. 56-57)

2898 "It was stated in the report of the last examination that a large portion of the stocks appearing among the collateral were those of local enterprises in which officers of this Company carried substantial interests. It might have been added that in addition to the officers, directors who were not officers also carried substantial interests in corporations, the stock of which were held as collateral. We found no appreciable change in this condition, either in loans discharged during the period under review or in those still on the Company's books at the end of the period, except that many of these stocks have been taken over in discharge of loans and now appear in the Company's investment portfolio. In practically all cases, stocks of the

2899 character referred to constituted the sole security of loans made to Company employees, and in a majority of these, it became necessary for the Company to take over the stocks, usually at a loss, in discharge of the loan.

2900 "On the loans unpaid on December 31, 1935, other than as already stated, direct or indirect connection between the borrowers and present or former officers and directors of the Company appeared only in two instances. Loan No. 2916, which is still under water but which now shows signs of considerable improvement due to appreciation in some of the collateral, was made to a company whose president was for several years a director of the Pacific Mutual.

2901 "Loan No. 2967 was originally made in 1930 to pay off the balance of a personal loan to a director and former vice-president of the Company, who was for some years president and in effect owner of the borrowing company. While the files do not disclose any definite official relation between the said director and the borrowing corporation at the present time, it is evident that some relationship has always existed, as he appears consistently in the correspondence. The collateral security for this loan was sold at auction in April 1936, by the Company, which bid in most of the collateral, taking a loss of approximately \$54,000.00. The Company may possibly recover about \$5,000.00 for a second

2902 lien on real estate held as part of the collateral, the Company holding the first lien, and it is also possible that some of the stocks taken over may appreciate in value, this statement being based on balance sheets exhibited to the Examiners. This loan illustrates the decline in interest rates, remarked upon above. Originally made at  $6\frac{1}{4}\%$ , the rate was decreased to 6% and later to 5%, both changes occurring in 1931. For the years 1932, 1933, 1934 and 1935, the interest returns were approximately 2.48%, .47%, .72%, and .62% respectively, and such interest as was received during this period was derived almost entirely from dividends on stocks held as collateral. Since the latter part of 1935, interest has apparently been waived, and all income from collateral security has been credited on principal.

2904 "Although some of the transactions briefly referred to in this report merit the most severe criticism, it is the opinion of the Examiners that, in view of the change in management in 1935, there will be no recurrence in the future, the files examined indicating that the Company's present officers are clearly cognizant of the situation and that they are making sincere efforts to apply effective remedies. As an illustration of this, it was found that upon one loan in particular the Company would renew the note only upon an advance in the interest rate from 4% to 6%, later compromised at 5%. The loan

2905 was not renewed, being paid off in cash. Unfortunately, such severe measures might ultimately result in the closing out of adequately secured loans, leaving on the books only such under-secured loans as could not be placed elsewhere." (p. 58 to 60).

Extracts from:

Report of Convention Examination of the Pacific  
Mutual Life Insurance Company

2906 of California  
as of December 31, 1932

Dated: May 20, 1933

States Represented: California, Michigan,  
Montana, Oklahoma and Oregon.

2907 "The Pacific Mutual Employees Stock Syndicate: On February 11, 1918, employees of the Company associated themselves in the organization of a syndicate toward the acquisition of the corporate stock of the employing corporation. Gradually the activities were expanded to the point where nine pools were in effective operation within a decade, five of which covered the stocks of other corporations. All of these pools were eventually consolidated under the designation: 'The Pacific Mutual Employees Stock Syndicate.'

"The plan involved the creation of a trust directed by three officers of the Company, the purchase of stock in the open market, its assign-

2908 ment as collateral security to the banking institution which provided the operating funds and distribution to subscribers upon discharge of contracted obligation. On December 31, 1932, the Security-First National Bank held the Syndicate's promissory notes aggregating an unpaid balance of \$952,362.22 and secured by corporate shares at a market value ascertained as of that date of \$618,185.69.

2909 "During the three year period under examination, when the market value of the collateral was no longer adequate to support the loan, the Company's directorate authorized contributions to Syndicate to an aggregate of \$480,872.72. In the Company's annual statement the expenditure was reported in the Life and Accident departments under the following items:

Salaries	\$171,331.21
Miscellaneous	304,433.32
Investigation of Claims	5,108.19
	<hr/>
	\$480,872.72

2910 "Your examiners have received a letter from the General Auditor of the Security-First National Bank of Los Angeles in which he states, 'The notes are not endorsed by the Pacific Mutual Life Insurance Company nor do we hold any agreements with that Company with respect thereto'.



2911 "The contributions in question were not applied towards a reduction of the individual employee's original obligation to the bank but toward augmentation of the collateral and consequent increased Syndicate obligations represented by straight purchases of additional corporate stock, open to speculative assumption of market support.

"In view of the plan of the Syndicate, we question whether the Company was warranted in  
2912 making these contributions. If the Company considers additional compensation should be paid to certain employees who have subscribed to the Syndicate, such additional compensation should depend on the value of the individual employee to the Company.

"These contributions may have been justifiable from the standpoint of the body of stockholders, but in that event, we feel no part of the sums disbursed should have been charged to the participating policyholders, particularly not during  
2913 a period when it seemed expedient to reduce policyholders' dividends. The examiners recommend that the sums charged to the Participating section on account of the contributions to the syndicate be restored by charging the entire contributions to the Non-Participating section and the Accident and Health Department. While the amount of loss involved in connection with the Employees' Stock Purchase Plan, during 1932,

2914 was comparatively small, it would seem proper that the portion thereof treated as an expense of the Participating section be likewise so restored." (P. 14 and 15)

"The review of the loan files revealed that the Company in several instances made mortgage loans to other companies and corporations, some of whose officers or directors are also officers or directors of this Company. On loan number 5375, it appears that the President, Vice-President and Treasurer of the borrowing corporation are Vice-President, President and Treasurer, respectively, of this company. From the correspondence in the loan file it appears that the loan was first made to a 'dummy' and subsequently assumed by the borrowing corporation.

"Under loans number Ax 991, 6121, 6720, 7001 and 7182, at least one officer or a director of the borrowing company is an officer or a director of this Company. The foregoing loans 2916 appear to have been made in contravention of the intent of the statute relating to loans to officers, or directors.

"The Company has been recently following the practice of increasing the principal amounts of certain mortgage loans where, in the opinion of the investment department, the appraised value of the property justified such increases.

"On loan number Ax 991 the Company has agreed to advance a total of \$265,000.00 in addi-

2917 tion to original loan of \$535,000.00, primarily for the purpose of demolishing the present building and the erection of proposed improvements. As of December 31, 1932, there had been absorbed out of this additional commitment an aggregate of \$85,417.49, segregated as follows: Taxes \$13,278.76, interest \$24,223.70, miscellaneous \$3,915.03, and direct to the borrower, \$44,000.00. This action, possibly justified by motives of investment protection, is open to previously voiced reflection with respect to interlocking directorate interests.

“On loan number Ax 734, there had accrued an interest obligation of \$42,685.65. The loan was increased by \$45,000.00 merely to meet said interest charges. Without definite effect on the asset item, the transaction tends to disturb the reporting information concerning items of interest in default”. (p. 34-35).

2919 “Collateral Loans: A thorough examination was made of the individual loans consisting of a detailed analysis of the notes, (both in the regular schedule and those carried as unlisted assets), a physical check of the collateral security, review of the correspondence files, and verification of the card records which reflect the current status of each loan.

“We have determined that many of these loans are without adequate collateral coverage. While the correspondence files covering a majority of the loans do not contain all the desired informa-

2920 tion to determine the reason that loans of this character were permitted to continue where the market prices covering the collateral security were on the decline, there is sufficient evidence available to indicate that the executive committee and members of the board of directors were continually conversant with the situation. However, regardless of the attention which may have been given these loans, there is every indication that the Company failed to adopt at the proper  
2921 time the obvious remedies to protect its interests.

"In view of these circumstances the Company, early in February of 1932, commenced writing down certain sums from the principal of the notes. In some instances the entire balance due on various notes was eliminated where the collateral security had a lower or no market value. In most cases, two separate notes were prepared and submitted to the borrower. One note was treated as a renewal loan, the amount being gov-  
2922 erned by the market value of collateral security. The second note was made to cover the remainder of the obligation at the time of write off, carried as an unlisted asset partially secured by excess value of collateral held under original note. The sum written off, which represents the gross decrease by adjustment in book value, was \$1,043,800.27. Of this amount, \$929,493.28 applies to the 88 loans reflected in Schedule "X" of Unlisted Assets, as evidenced by the second note. A further analysis reveals the disappearance of

2923 the remaining portion of \$114,306.99, \$85,097.98 of which has been charged off to profit and loss or abated, under proper authorization." (p. 35-36)

"It must be remembered since the Company returned the original notes to the borrower in practically all cases where a renewal could be secured at time the loan was written down, that the borrower is relieved from further obligation on the portion not included in either of the two 2924 mentioned notes. It may therefore conceivably eventuate that a borrower would, on an advancing market, be placed in a position to extinguish his obligation to the Company and receive the balance upon disposition of collateral security, notwithstanding the fact that he actually owes the moneys to the Company.

"It seems to be of considerable importance to briefly mention *some* facts in connection with various loans. Some of the loans are of long 2925 standing and additional loans have been advanced from time to time with only occasional reductions in principal. In some instances the increased loan covered delinquent interest on the loan, or to meet capital stock assessments on holdings included in the collateral security on deposit. Although there is little information in the correspondence files to reveal how the loans originated, there were found numerous notations to indicate that additional loans and changes in interest rates were authorized by the President and the Execu-



2926 tive Vice-President. In July of 1931, a resolution was adopted whereby only the President was empowered with authority to approve a lower rate than 6% interest. Adjustments of interest rates were since made by the Executive Vice-President and it is deemed proper that the Board of Directors ratify the action which is apparently inconsistent with the resolution hereinbefore referred to.

2927 "A large portion of the stocks appearing among the collateral held is represented by issues in local enterprises in which officers of this Company carry a substantial interest.

"The excess of loans over market values of collateral in amount of \$351,492.84 has been deducted under 'Assets Not Admitted'.

2928 "Attention is invited to loan No. 2830 which stood at a balance of \$25,000.00 as of December 31, 1932. This loan was originally made September 18, 1931 in the amount of \$36,000.00 and the collateral security was represented by a group of various stocks. During October of 1931 the loan was increased to \$38,500.00. In 1932, payments on account of principal amounting to \$3,500.00 reduced the loan to \$35,000.00 and a write off of \$13,000 left an unpaid balance of \$22,000.00. An additional loan of \$3,000.00 was subsequently made and the two amounts combined into one note in the sum of \$25,000.00. There is no information in the files to justify the loan follow-



2929 ing. the write off and the action appears entirely unwarranted.

"Collateral loan No. 2739 in the amount of \$897,000.00 as of December 31, 1932, represents the present unpaid balance of a combination of two loans originally negotiated by a borrower for \$600,000.00 and \$200,000.00 respectively.

2930 "The \$600,000.00 loan was originally secured by a mortgage on 480 acres of land, which land was leased to the City of Los Angeles during 1928 for an airport for a period of fifty (50) years at a rental of \$7,800.00 per month. In December 1930, the borrower caused \$1,000,000.00 of 6% bonds to be issued on this property. The entire bond issue was substituted for this particular loan and the mortgage released. The \$200,000.00 collateral loan was secured by 3525 shares of capital stock of local enterprises.

2931 "In 1931 the two loans mentioned above were combined with an additional increase of \$100,000.00 making the entire loan \$900,000.00, secured by some collateral and covered by policy of title insurance in favor of Trustee certifying the validity of the lease on the airport.

"Aside from the obligation to this Company, the original borrower had debts owing to two other local enterprises with which officers of this Company were affiliated, aggregating \$208,842.00 as evidenced by promissory notes collaterally secured. In effect, the collateral so held by the

**2932** Pacific Mutual, in addition to furnishing security for its loan of \$900,000.00, also provides security for the \$208,842.00 owed to others.

"By an agreement dated November 27, 1931, the Controller for the City of Los Angeles was authorized and directed by the present borrower to pay all of the monthly rentals when due to this Company, commencing with the installment due January 1, 1932. The apportionment of such

**2933** rental was agreed upon as follows:

(A) Interest due on note of present borrower to this Company.

(B) Payment of \$1,500.00 per month account of principal of note above described or any renewals or extensions thereof.

(C) Payment of \$1,000.00 per month account of principal of notes owed to other enterprises by original borrower.

**2934** (D) Delinquent interest, if any, on the outstanding indebtedness to these other enterprises by original borrower, provided claims are filed with this Company.

"The bonds issued by the present borrower are first mortgage six per cent serial gold bonds, dated December 15, 1930, in denominations of \$1,000.00 each with definite quarterly maturities until retirement in 1945. Twenty-six Thousand

2935 Dollars (\$26,000.00) of these bonds matured and were retired during 1932. Since the bonds mature in increasing amounts annually and the sums retired in any one year exceed the portion of monthly rentals allocated direct to the Company on account of reduction of principal of the note, it is obvious that a gradual impairment in collateral security eventuates as bonds mature and are turned in for cancellation in excess of the 2936 loan reduction of \$18,000.00 per annum.

"Since the remainder of the rental revenue, after all distributions are made as provided in items A, B and C of agreement, is returned to the borrower, the Company should, in view of prospective impairment of collateral security, arrange to revise the agreement so as to enable it to retain the entire balance left after application heretofore mentioned.

2937 "Liberal test checks were made of the interest calculations covering all loans and the written record maintained currently on such cards was properly verified. While some entries were inconsistent with written authorization, it was ascertained that they were made pursuant to oral instructions and proper ratification should be recorded. It is further recommended that the correspondence files covering each loan be amplified

2938 to incorporate all available information applicable thereto.

"In course of the verification of card records, it was ascertained that a few loans reported in existence on December 31, 1932 were paid in full during 1933, while of those included among the unlisted assets, two were paid in full and payments were made on others.

2939 "Although the Company had applied 'convention' valuation to its collateral securities, we have established actual market values as of December 31, 1932 and deducted the excess of loans in amount \$351,492.84 under assets not admitted.

"An additional sum in amount of \$275,000.00 is included in the contingency reserve to provide for any future detrimental fluctuations.

2940 "We cannot escape the conviction that the disproportionate losses sustained in this form of investment are, in a great measure, due to an over optimistic attitude on part of the management coupled with particular anxiety to protect the borrowers. Had the Company followed its usual conservative policy substantial losses might have been avoided. It might well be considered that, aside from the preservation of friendly relations with borrowers, the management may have thought it inexpedient to give additional impetus to an already much disturbed general financial situation!" (p. 36 to 38).

2941

EXHIBIT B.

Plan of Reorganization Submitted on Behalf of  
Non-Cancellable Income Policy Holders

\* \* \* \* \*

One additional company is to be set up; the new Pacific Mutual Life Insurance Company will be called the Life Company; and the Pacific Mutual Holding and Liquidating Company to be set-up will be called the Non-Can Company.

2942

Following each paragraph will be a very brief explanatory note outlining the principal idea underlying the proposed item.

I.

The Life Company to follow the present lines with appropriate modifications as indicated in the answer, except that

2943

(a) All provisions in the Commissioner's plan not customarily inserted in set-ups where life insurance company stock is sold to conservative investors shall be eliminated from the agreement.

(b) This shall include the entire elimination of the provision with respect to mutualization.

(c) It shall include provision for a present appraisal of all assets.

The Life Company should be unhampered by restrictions and conditions at which competitors may shoot. All doubts as to the value of its assets should be promptly removed.

2944 Its structure should be simple so that he who runs may read.

It should be in such situation that

(a) it can readily reinsure without prejudicial delay; (b) it can be ready for consolidation with other insurance companies without structural change and without the trading handicap of unusual restrictions and obligations outside its functions as a Life Insurance Company.

2945 (c) It should be ready to receive new capital through underwriting at any time without fundamental modification of its corporate structure or its contractual relations.

It is believed that there will be no difficulty under these conditions in securing an underwriting of a preferred issue of from \$10,000,000 to \$15,000,000 as soon as the Life Company is so set up and hence in shape to be truly rehabilitated.

2946

## II.

The Non-Can Company shall be set-up with an authorized capital sufficient to restore all impairment of non-can reserves and provide adequate working capital. The company will be strictly a holding company and a liquidating company and will write no new insurance.

This company will assume the non-cancellable income policies substantially according to the Schedule provided in the Commissioner's plan hereafter provided, but will, as stated, write no



2947 new non-can business. It may have to remain in Conservatorship for a time.

It will assume administration expenses and claims as set forth in the Commissioner's plan, modified as indicated by the answer.

The non-can business of the Non-Can Company shall be serviced by the new company on a service charge basis.

2948 The Non-Can Company will also be a Holding Company for all the stock of the new company as hereafter outlined and the dividends on this stock will go into the Non-Can Company's treasury.

### III.

#### Transfer of Assets to the New Company.

To the company shall be transferred:

(a) All reserves with allocable assets other than life reserves and the capital and surplus of the Life Company.

2949 This will leave the Life Company in good condition with its full life reserves and its full capital and surplus of \$3,000,000

(b) The entire capital stock of the Life Company. It is believed that under this plan the value of this stock in the Life Company will somewhat offset the contributions by the non-cans of their share of the life reserves to the life policy holders, and their surrender of the non-can pro-rata share in the assets of the Life Com-

2950 pany, and that future dividends on this stock go into the non-can reserves.

The entire capital and surplus of the new company was all contributed out of the non-can reserves, and its equivalent in stock belongs in the assets of the Non-Can Company.

(c) All causes of action against directors, stockholders and for damages for misfeasance and non-feasance.

#### IV.

2951 Adequate Reserves to Be Created:

The Commissioner shall after appraisal of all assets then determine what additional sum is required to create adequate reserves for the non-can policies, which shall be entirely or partially restored as hereafter stated.

#### V.

Disposition and Sale of Capital Stock of the Non-Can Company:

2952 To raise this sum and supply adequate working capital, the capital stock of the company shall be disposed of as follows:

(a) All of the stock of the Non-Can Company shall be issued to voting trustees under a trust agreement, the duration of which shall be ten years. The voting trustees shall be three (3) in number; one to be selected by the non-can policy holders, acting thru their attorney in this action in their behalf, but to be replaced by the

2953 vote of a majority of the non-can policy holders at any time; the second to be the Insurance Commissioner, or his nominee; and a third trustee selected by the court.

(b) The voting trust certificates shall be offered for sale at such price as will wipe out all impairment of non-can reserves and provide adequate working capital.

(c) The voting trust certificates shall be offered to the non-can policy holders in proportion to the reserve to be actuarially set up for their respective policies. Each non-can policy holder shall have the following options:

1. To subscribe to his allotted share.
2. To accept a raise in premium to enable him to pay the company the equivalent of the price of the voting trust certificates allotted to him in ten (10) years at the end of which time upon full payment, his voting trust certificates shall be delivered to him.

2955 To protect each policy holder and the Non-Can Company in case of death of any policy holder before he shall have paid for his stock, it shall take out group term life insurance in the Life Company to the extent of the unpaid subscriptions on the group lives of the subscribing policy holders.

The old company is at present apparently insolvent to the extent of \$17,000,000.00. This insolvency is wholly falling under the present

2956 plan, on the non-can policy holders, whose reserves, besides being impaired to this extent, have contributed out of the remaining reserves the entire capital stock of the new company, which in equity belongs to them, as do the remaining reserves.

The entire interest in the company of the stockholders has been wiped out by insolvency.

2957 The stockholders have no equity in this company. On the contrary they have received over \$5,000,000.00 to which they are not entitled and which properly belongs in the non-can reserves, and which should be restored by them as a condition precedent to any consideration to their alleged claims.

By surrendering, then, their share of the assets of the life reserves to the life policy holders and contributing its capital, the non-can policy holders have a paramount equity in the profits of the new company.

2958 They, and only they, are contributing out of the assets which belong to them the capital, surplus, and a large amount of assets taken into the new company for life reserves, and there is no reason in law or common sense, since they are as a class presently taking this enormous loss, why they should not have all of the profits. In the event of the insolvency of the new company, the entire loss will fall on the non-can policy holders.

2959 If the stockholders of the company wish to step into these shoes, they can only do so by assessing themselves as indicated.

(e) If any non-can policy holder fails to accept either option offered him, and elects to continue paying only his present premium, and if the stock offered to him remains unissued, a lien shall be created against his policy to the extent that he shall not be entitled to have consideration in reserves against his policy created thru con-

2960 tributions under the plan by non-can policy holders.

## VI.

Assumption by the New Company of Non-Can Policies:

The Non-Can Company, except as in Paragraph V, sub-paragraph (e) provided, shall assume all non-can policies and claims thereon as follows:

2961 (a) Immediately on the schedule as provided in the so-called contract of rehabilitation of July 23, 1936 to be modified in accordance with this set-up and as agreed by the Commissioner of Insurance.

(b) As soon as the stock shall be fully subscribed, the provisions of (a) shall cease, and the non-can policies shall be fully assumed although losses would be payable only out of funds received with the exception before noted.

2962 (c), If the stock is not fully subscribed, the company shall have its reserves readjusted each six months by the Insurance Department, and the benefits properly distributed to the policy holders, except as otherwise herein provided.

## VII.

### Plan Self-Operative:

2963 Either the policy holder accepts the plan in toto (and subscribes to his stock or not, as the case may be) and thereby becomes a policy holder in the Non-Can Company, or files a claim and proves his damages.

## VIII.

### Dividends:

2964 Dividends on the stock of the Life Company will be available to restore the non-can reserves, with due regard to their rights. Each dividend will increase the value of the Non-Can Company stock, and appropriate provisions for requirement of distribution to non-can policy holders can be made.

## IX.

### Management:

The voting trust provision assures a management satisfactory to the court and the Insurance Commissioner.

## X.

### Working Out of Plan:

The new contract must be worked out in conference with counsel to the Insurance Commis-



2965 sioner. It cannot be drafted in advance of the court's ruling on various points raised by the answer.

## XI.

### Ratification by Policy Holders:

In view of the 100% restoration of life policy holders, their assent will not be required. The contract to be drawn should require the affirmative vote of 51% of the non-can policy holders who chose to vote.

## XII.

### Modifications:

This plan, if preserved in its general scope, may be modified in the respects in which it does not meet with the Commissioner's approval.

Note: This plan, with modifications, has been previously submitted by Mr. H. S. Dottenheim and Mr. Ben Hunter who joined in its preparation to the Commissioner.

2967 Verified.

Endorsed: Received copy of the within answer this 6th day of October, 1936. U. S. Webb, Attorney General.

Filed Oct. 6, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

2968 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of The State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent; Pacific Mutual Life Insurance Company, intervenor. No. 404,673.

**Return of Vernon Bettin and William George Dickinson to Order to Show Cause.**

2969 Come now Vernon Bettin and William G. Dickinson, policy holders and persons interested in the above entitled proceedings and file through their attorneys, Bettin, Painter & Wait, this their return to the order to show cause issued by the above entitled court on the 25th day of September, 1936, and their objections to the proceedings in said cause as follows:

I.

2970 That at all times herein mentioned, objector, Vernon Bettin, was and now is the owner and holder of Non-cancellable Income Policy Number 4661809, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

That at all times herein mentioned, objector, William George Dickinson, was and now is the owner and holder of Non-cancellable Income

2971 Policy Number 4642314, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

## II.

Objectors object to the

a. Ratifying, confirming and approving of the account of the conservator as set forth in paragraph 1 of the order to show cause.

2972 b. Ratifying, confirming and approving the transfer and conveyance as set forth in paragraph 2 of the order to show cause.

c. Ratifying, confirming and approving a rehabilitation and re-insurance agreement as set forth in paragraph 3 of the order to show cause.

d. Authorizing and directing said conservator to transfer, convey, release, etc., as set forth in paragraph 4 of said order to show cause.

2973 e. Authorizing and directing the conservator fully and faithfully to perform, etc., as set forth in paragraph 5 of said order to show cause.

f. All matters set forth in paragraph 6 of the order to show cause.

g. All matters set forth in paragraph 7 of the order to show cause.

h. Ratifying, confirming and approving any and all acts, things, or transactions performed, done or entered into by said conservator, as set forth in paragraph 9 of the order to show cause.

2974

and

i. Ratifying, confirming, / approving that certain order permitting the performance of acts and the making of payments necessary to conserve and protect assets and to prevent the waste thereof, dated August 17, 1936.

2975

j. Each, every and all of the proceedings taken and had up to and including the issuance of said order to show cause on the 25th day of September, 1936, by the Honorable Henry M. Willis, judge of the above entitled court;

k. Each, every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings.

### III.

The objections aforesaid are made upon the following grounds, to-wit:

2976

a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no hearing of motion for said permission and order was had as required by section 1016 of the Insurance Code of the state of California;

b. That the proposed plan of rehabilitation is not the best possible plan for the protection of these objectors and other policy holders in The

2977 Pacific Mutual Life Insurance Company of California similarly situated;

c. That said plan, if adopted or approved by this court, will render the policy owned and held by these objectors practically worthless;

d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to these objectors;

e. That said plan, if carried out, would constitute a violation of these objectors' rights under sections 7, 11, 13, 16, 21 and 22 of article 1 and section 1 of article 3 and section 1 of article 12 of the Constitution of the state of California, and also section 1 of the 14th amendment to the Constitution of the United States of America.

2979

#### IV.

These objectors object to any plan or scheme which would impair in any manner or way, the obligation of these objectors' contract with The Pacific Mutual Life Insurance Company of California.

#### V.

These objectors object to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the

2980 ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void. ✓

#### VI.

Objectors object to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would  
2981 not justify the making of said order.

#### VII.

Objectors hereby refer to the objections heretofore or hereafter filed by all other persons in a similar situation; and to complaints in intervention heretofore or hereafter filed by persons in a similar situation as these objectors in respect to the above entitled proceedings, and by such reference hereby adopt the said objections and said  
2982 complaints in intervention of said persons and incorporates the same herein as a part of this return.

#### VIII.

Objectors hereby make demand upon the old Pacific Mutual Life Insurance Company, the new Pacific Mutual Life Insurance Company, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, that they and



2983 each of them immediately furnish through auditors and appraisers, to be appointed by the court (1) a complete audit of the business and affairs of the Pacific Mutual Life Insurance Company covering the last ten years, with particular reference to the stock and other transactions participated in by any director, officer or employee or agent of the company, and (2) a complete appraisal of the assets of the Pacific Mutual

2984 Life Insurance Company held by the insurance commissioner, this appraisal to be made of the basic assets and not of the stock of either corporation.

Wherefore, these objectors pray that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, 2985 every and all of the orders heretofore made in the above entitled proceeding and restoring these objectors to the same status that they occupied before said proceedings were instituted.

BETTIN, PAINTER & WAIT,

By VERNON BETTIN,

*Attorneys for Objectors.*

Verified.

2986 (AFFIDAVIT OF SERVICE BY MAIL.)

State of California, County of Los Angeles—ss.

Ray H. Kinnison, being duly sworn, deposes and says:

2987 That his business address is 1030 Rives Strong Building; that he is a citizen of the United States, and a resident of the county of Los Angeles; that he is over the age of eighteen years, and not a party to the above-entitled cause; that on the 5th day of October, 1936, he placed a copy of the within return of Vernon Bettin and William George Dickinson to order to show cause in an envelope addressed to Mitchell, Silberberg & Knupp, 603 Roosevelt Building, Los Angeles, California, which is the office address of the attorney for the petitioners in said matter, sealed said envelope and deposited it in the U. S. mail at Los Angeles, with the postage thereon fully prepaid; that there is a regular communication by mail between the place of mailing and the place so addressed.

2988 RAY H. KINNISON.

Subscribed and sworn to before me this 5th day of October, 1936.

4 (Seal) GERTRUDE R. KLEIN,  
*Notary Public in and for Said County and State.*

Endorsed: Filed Oct. 6, 1936, 4:05 p. m.  
L. E. Lampton, county clerk; by M. Zimmerman,  
deputy.

**2989** In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404-673.

**2990** **Order Amending Order Appointing Conservator and Restraining Order Nunc Pro Tunc.**

This matter having come on for hearing on the objections of certain interveners to the order appointing conservator and restraining order made and entered herein on the 22nd day of July, 1936, and on motion of the Attorney General duly made in open court that the recital appearing in the order appointing conservator and restraining order entered on the 22nd day of July, 1936, and the order appointing conservator and restraining order entered on August 11th, 1936, through mistake, inadvertance and excusable neglect, did not correctly recite the facts that actually appeared to the court from the application of petition for an order appointing a conservator and restraining order; and

It appearing to this court that the application of petitioner for an order appointing a conservator and restraining order alleged facts sufficient for the issuance by this court of an order ap-

2992 pointing a conservator and restraining order and in all other respects conformed to the requirements of section 1011 of the Insurance Code of California, and that said orders appointing a conservator and restraining order entered herein on July 22, 1936, and August 11, 1936, should be so corrected that they recite the facts actually appearing to the court at the time petitioner's application for an order appointing a conservator and restraining order was presented and said  
2993 orders of July 22, 1936, and August 11, 1936, were made and entered herein; and the court being fully satisfied in the premise.

It is therefore ordered that the order appointing conservator and restraining order made and entered herein on ~~July~~ 22, 1936, be and the same is hereby amended *nunc pro tunc* as of July 22, 1936, by striking therefrom the second paragraph reading as follows:

2994 "The court finds that petitioner herein, together with a number of other insurance commissioners of states in which respondent corporation transacts its business, made a convention examination of the business and affairs of respondent corporation as of December 31, 1935, and in connection therewith petitioner and said other commissioners have joined in a report of such examination, certified copy of which said report is attached to said application as Exhibit A thereof; that said examination and report and evidence shows and the court finds the fact to be

2995 that respondent corporation is in such condition that its further transaction of business will be hazardous to its policyholders, its creditors and to the public; that said examination and report and evidence further shows and the court finds the fact to be that respondent corporation is insolvent within the meaning of article 13, chapter 1, part 2, division 1, of the Insurance Code of the state of California; that respondent corporation's said hazardous and insolvent condition is  
2996 principally caused, among other things, by reason of the fact that respondent corporation has for a considerable number of years last past issued a large number of non-cancellable accident and health policies at a premium rate which was and is now entirely inadequate to maintain the reserves required by law to mature said policy obligations."  
and by inserting in lieu thereof the following:

2997 "It appearing to the court that said application is verified and shows that petitioner has found, after an examination of respondent by petitioner, that respondent is in such condition that its further transaction of business will be hazardous to its policyholders, its creditors, and to the public; and it further appearing to the court that said application is accompanied by a certified copy of petitioner's last report of his examination of respondent showing petitioner's finding that respondent is insolvent within the

2998 meaning of article 13, chapter 1, part 2, division  
1, of the Insurance Code of the state of Cali-  
fornia."

It is further ordered that the order appointing conservator and restraining order made and entered herein on August 11, 1936, be and the same is hereby amended *nunc pro tunc* as of August 11, 1936, by striking therefrom the second paragraph reading as follows:

2999 "The court finds that petitioner herein, to-  
gether with a number of other insurance com-  
missioners of the states in which respondent cor-  
poration transacts its business, made a conven-  
tion examination of the business and affairs of  
respondent corporation as of December 31, 1935,  
and in connection therewith petitioner and said  
other commissioners have joined in a report of  
such examination, which said report is petition-  
er's last report of examination of respondent,  
and a certified copy of which said report is at-

3000 tached to said application dated July 22, 1936,  
as Exhibit A thereof; that said application, ex-  
amination and report, and each of them, shows  
and the court finds the fact to be that respondent  
corporation is in such condition that its further  
transaction of business will be hazardous to its  
policyholders, its creditors and to the public; that  
said application, examination and report, and each  
of them, shows and the court finds the fact to be  
that the respondent corporation is insolvent with-  
in the meaning of article 13, chapter 1, part 2,



3001 division 1, of the Insurance Code of the state of California; that respondent's said hazardous and insolvent condition is principally caused, among other things, by reason of the fact that respondent corporation has for a considerable number of years last past issued a large number of non-cancellable accident and health policies at a premium rate which was and is now entirely inadequate to maintain the reserves required by law to mature said policy obligations."

3002 and by inserting in lieu thereof the following:

"It appearing to the court that said application is verified and shows that petitioner has found, after an examination of respondent by petitioner, that respondent is in such condition that its further transaction of business will be hazardous to its policyholders, its creditors, and to the public; and it further appearing to the court that said application is accompanied by a certified copy of petitioner's last report of his examination of re-

3003 spondent showing petitioner's finding, that respondent is insolvent within the meaning of article 13, chapter 1, part 2, division 1, of the Insurance Code of the state of California."

Done in open court this 8 day of October, 1936.

HENRY M. WILLIS,

*Judge.*

Endorsed: Filed Oct. 8, 1936. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

**3004** In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent; E. A. Conway, intervener. No. 404-673.

### Complaint in Intervention.

Leave of court first being had and obtained,  
**3005** E. A. Conway, individually and as Secretary of State and *ex-officio* Commissioner of Insurance of the State of Louisiana, on behalf of all policyholders of The Pacific Mutual Life Insurance Company of California residing in the state of Louisiana who may wish to join with him in this proceedings, intervener herein files this his complaint in intervention and alleges as follows:

#### I.

**3006** That petitioner is named as the insured in and is the owner and holder of non-participating ordinary life policy #426129, dated May 3, 1921, in the amount of \$10,000. issued by respondent corporation. That he is also named as the insured in and is the owner and holder of non-cancellable income policy #4616854, dated April 26, 1921, providing for the payment of indemnity of \$300.00 per month during the continuance of disability resulting from accidental means or sickness and consisting of a continuous total loss of business time, and the premiums hereto-

3007 fore coming due on each of said policies have been fully paid and on July 22, 1936, each of said policies was in full force and effect. That as Secretary of State and *ex-officio* Commissioner of Insurance of the State of Louisiana, he is the proper party to represent policyholders residing in said state who wish to join with him in this proceedings.

## II.

3008 That at all times herein mentioned the respondent, The Pacific Mutual Life Insurance Company of California, has been and now is a corporation organized, existing and doing business under and by virtue of the laws of the state of California, with its principal place of business in the city of Los Angeles, in said state, and hereafter in this complaint in intervention said corporation may be referred to as "old company."

## III.

3009 That on July 22, 1936, there were in full force and effect many thousands of life and accident and sickness policies including non-cancellable income policies issued by respondent corporation to residents of the state of Louisiana. That on the 22nd day of July, 1936, a proceedings entitled as above was commenced in the above entitled court by Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as petitioner, against The Pacific Mutual Life Insurance Company of California, as respondent, seeking the appointment of said commissioner as conservator of respondent corporation, and further relief.

3010

IV.

That said old company also did business under and by virtue of the laws of the state of Louisiana and that many people residing in the state of Louisiana purchased policies of insurance from such company and as all premiums heretofore coming due on each of said policies have been fully paid, on July 22, 1936, each of said policies are in full force and effect.

V.

- 3011 That prior to or on or about July 22, 1936, and for a period of, to-wit: 68 years, said old company has been continuously engaged in the state of California and elsewhere in the business of issuing and selling life insurance and during a portion of that time, to-wit: for a period of fifty years immediately last past in the business of issuing and selling contracts and policies of health and accident insurance and that since on or about August, 1918, said old company has
- 3012 been issuing and selling non-cancellable contracts and policies of health and accident insurance.

VI.

That on July 22, 1936, said Samuel L. Carpenter, Jr., was by this court appointed conservator of respondent corporation. That thereafter and on said day, said petitioner filed herein his application for an order appointing him as liquidator of said respondent corporation. That immediately thereafter and on said day, said petitioner was by this court appointed liquidator of

3013 respondent corporation. That on said day and immediately after his appointment as such, said liquidator filed herein his petition for approval of rehabilitation, sale and transfer of assets and reinsurance plan and agreement, which said petition was on said day by this court granted and an order approving rehabilitation, sale and transfer of assets and reinsurance plan and agreement was entered herein.

## VII.

3014 That thereafter said orders appointing liquidator and approving rehabilitation, sale and transfer of assets and reinsurance plan and agreement, were, upon good cause shown, vacated by this court. That on August 14, 1936, said Samuel L. Carpenter, Jr., petitioner herein, filed herein his further petition with respect to rehabilitation, sale and transfer of assets and reinsurance plan and agreement. That on said day this court made its order to show cause with respect to said

3015 rehabilitation, sale and transfer of assets and reinsurance plan and agreement. That no hearing on the return of said order to show cause has been had.

## VIII

That intervener is informed that said petitioner has prepared and filed with this court a revised or amended rehabilitation plan of respondent corporation, and has also filed herein his petition for approval thereof. That a copy of said revised or amended rehabilitation and reinsurance agree-

3016 ment is hereto annexed, marked "Exhibit A" and  
is made a part hereof, by reference.

IX.

That the intervener is familiar with the provisions of said revised or amended rehabilitation plan. That it is fair, just and equitable to all classes of policyholders and all stockholders and creditors of respondent corporation. That it is not in violation of the Constitution of the United States or the Constitution and laws of the state  
3017 of California.

X.

That the benefits to active life non-cancellable policyholders under said revised or amended rehabilitation plan are of a far greater value to each of such policyholders than would be the distributable share of the assets of respondent corporation to each of the members of such class of policyholders in the event of liquidation.

XI.

3018

That said plan is now the only plan before the court for approval. That said plan is the result of a prolonged series of conferences between said petitioner and attorneys representing intervening policyholders, including life and non-cancellable policies, creditors and stockholders of respondent corporation. That intervener is informed and believes and upon such information and belief alleges that the delays necessarily incident to the formulating of another or different plan of rehabilitation of respondent or further revising or



3019 amending said plan will cause great and irreparable damage to the estate of respondent corporation through the loss of agents, new business and the lapsation of active policies, and that the failure of this court to promptly approve said plan will cause great loss and irreparable damage to petitioner individually and to other policyholders in the state of Louisiana represented by said petitioner in his capacity as Secretary of State and *ex-officio* Commissioner of Insurance  
3020 of the State of Louisiana.

Wherefore, your intervener prays:

1. That said revised or amended plan of rehabilitation of The Pacific Mutual Life Insurance Company of California be approved in accordance with the petition of said Samuel L. Carpenter, Jr., as conservator of respondent corporation;
2. That all objections to said revised or  
3021 amended rehabilitation plan be overruled; and
3. For such other and further relief as to the court shall seem just and equitable.

Dated: Oct. 5th, 1936.

E. A. CONWAY,

E. A. CONWAY,

*Individually and as Secretary of State and Ex-  
Officio Commissioner of Insurance of the  
State of Louisiana, Petitioner.*

D. W. ELHSON, Atty.

Verified.

3022

EXHIBIT A

REHABILITATION AND REINSURANCE AGREEMENT

This Agreement, made and entered into as of the 22nd day of July, 1936, between Pacific Mutual Life Insurance Company, a California corporation, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as conservator of The Pacific Mutual Life Insurance Company of California, a California corporation,

3023

Witnesseth:

That for and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

Definitions

3024

(1) "Commissioner" shall mean Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California, or his successors in office as such Commissioner.

"Conservator" shall mean Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, in his capacity as Conservator of The Pacific Mutual Life Insurance Company of California, or his successors in office as such Conservator.

"Old Company" shall mean The Pacific Mutual Life Insurance Company of California.

"New Company" shall mean Pacific Mutual Life Insurance Company.

3025 "The Court" shall mean the Superior Court of the State of California, in and for the County of Los Angeles.

"Non-Can Policies" shall mean those policies of the Old Company usually known as its "Non-Cancellable Income Policies" including the Aggregate form thereof.

"States" when referred to a governmental subdivision shall be deemed to include Territories and the District of Columbia.

3026 "Properties of the Old Company" shall mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character, and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as Conservator, plus

3027 all property acquired by the Conservator and the income therefrom collected by him, except (a) the stock of the New Company held by him; and (b) rights or claims, if any, of whatsoever nature which the Old Company may have against any of the present or past officers, directors, or employees, as such, of the Old Company, or against any other person, firm, or corporation, by reason of or in connection with wrongful or illegal acts or omissions, if any, of any of the past or present officers, directors, or employees

3028 of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company, to secure the faithful performance by any of its officers, directors, or employees of any of their duties as such.

"Effective Date of this Agreement" shall mean July 22, 1936, at the hour of one o'clock P. M. Pacific Standard Time.

3029 "Liquidator" shall mean any person hereafter appointed Liquidator of the Old Company in the proceeding now pending in the Court entitled "Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California vs. The Pacific Mutual Life Insurance Company of California", and bearing number 404673 in the records of the Court; and any person succeeding to the office of such Liquidator.

#### Transfer of Assets

3030 (2) The Conservator agrees, by appropriate instrument of conveyance, to sell, assign, convey, release, transfer, set over, and deliver, to the New Company, the properties of the Old Company; and to execute any and all further documents or instruments as may be reasonably necessary to effectuate and confirm the title of the New Company thereto.

The Conservator shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any governmental authority as a condition to the conduct of

3031 its business, nor to make manual delivery of any premiums or other assets which are in the possession of receivers of the Old Company or its assets or business, or in the possession of other governmental authorities, in states other than California; but in connection with receivership or other proceedings in such other states, the Conservator shall do any and all things proper for him to do to bring about and accomplish the delivery and transfer of such premiums or other assets to the New Company.

3032 The Conservator shall transfer and deliver to the New Company the full amount of all premiums on any policy reinsured and assumed hereunder which have been paid to the Conservator on or after the effective date of this agreement, and the New Company shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy

3033 shall elect not to accept such reinsurance and assumption by the New Company. If any policy holder of the Old Company whose policy may be reinsured or assumed hereunder shall have paid his premium thereon to the Conservator subsequent to the effective date of this agreement, and shall thereafter elect to reject reinsurance and assumption of his such policy hereunder; and if the Court shall direct the Conservator or Liquidator to return said premium (or the net premium or premiums less charge for insurance

- 3034 service or collection charge or otherwise); then  
and in those events the New Company shall re-  
pay to the Conservator or Liquidator, on demand,  
said premium, or so much thereof as the Court  
may have ordered returned by the Conservator  
or Liquidator, as aforesaid. Pursuant to the  
provisions of Section 1043 of the Insurance Code  
of the State of California it is agreed that sub-  
sequent to the effective date of this agreement,  
and for such period of time as the Commissioner  
3035 may determine, no investment or reinvestment of  
the assets of the Old Company shall be made  
without first obtaining the written approval of  
the Commissioner.

Reinsurance and Assumption of Policies Other  
Than Non-Can Policies.

- 3036 (3) The New Company does hereby reinsure  
and assume, as of the effective date of this agree-  
ment, with the exception hereinafter provided,  
the liability of the Old Company and of the Con-  
servator under all life, endowment, annuity and  
term policies and contracts of insurance, and all  
other policies and contracts of insurance includ-  
ing, without limiting the same to, health and  
accident benefits, waiver of premium disability  
benefits, permanent and total disability benefits,  
home office employees disability benefit plan, and  
all supplementary contracts, annuity contracts,  
and all reinsurance contracts, issued or assumed  
by the Old Company and outstanding and in



3037 force on the books and records of the Old Company at the effective date of this agreement; or issued by the Conservator in his name as Conservator, in the name of the Old Company, or in the name of the New Company, subject, however, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against said policies or contracts, or against any claims and actions thereon, which would have been available to the Old Company or the Conservator as aforesaid had this agreement not been made: provided, however, that no outstanding Non-Can Policies are reinsured or assumed under this paragraph, and all of such policies are hereby expressly excepted from the obligations of the New Company under this paragraph.

#### Reinstatement of Lapsed Policies

3039 (4) The New Company will reinstate any policies heretofore issued, assumed, or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the effective date of this agreement, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

3040 The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of the policies reinsured and assumed under Paragraph (3) hereof, which have lapsed since the effective date of this agreement, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums  
3041 are paid within seventy-five (75) days after the entry of the order of the Court approving this agreement. Upon the reinstatement of such lapsed policy it shall, for all purposes, be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of this agreement and be subject to the terms and conditions of this agreement.

Payment of Policy Claims Other Than Claims on  
Non-Can Policies.

3042 (5) The New Company will pay in full, in accordance with the terms and conditions of all policies including annuities under which claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the effective date of this agreement, all policy claims against the Old Company (except claims on Non-Can Policies) including, without limiting the same to, claims for death benefits, matured endowments, annuity payments, per-

3043 manent total disability and premium waiver benefits, accident and sickness benefits, payment under policy settlement agreements, policy dividends left at interest with the Old Company prior to the effective date of this agreement, and payments under all other matured contracts under which the proceeds of policies and contracts were left with the Old Company prior to the effective date of this agreement; and the New Company will assume the liabilities of the Old Company 3044 with respect to deposits, moneys left with the Old Company at interest, overpayments, duplicate payments, or advance payments of premiums, and return of premiums arising from cancellations prior to July 22, 1936; all subject, however, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against any such claim or claims which would have been available to the Old Company had this agreement not been made.

3045

#### Participating Department

(6) The New Company agrees to establish a separate department for Participating Life Insurance, and to allocate thereto specifically or in tenancy in common that portion of the assets conveyed to it by the Conservator (other than the Three Million Dollars (\$3,000,000.) transferred to the New Company for its capital stock) in the ratio in which assets appearing on the books of the Life Department of the Old Com-

pany were credited to the Participating Life Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the operations of the business of the Old Company by the Conservator, including the writing of the new participating life insurance by the New Company, and except assets of the book value of One Million, Seven Hundred Ninety-Two Thousand, One Hundred Eighteen Dollars and Ninety-seven Cents (\$1,792,118.97) transferred by the Conservator to the Accident and Health Department.

The said Three Million Dollars (\$3,000,000.) transferred to the New Company for its capital stock constitutes and shall constitute the capital and paid-in surplus of the New Company; and neither the Participating Department nor the holders, present or future, of participating policies shall have any right, claim, or interest therein prior to other Departments or their policy holders. The said assets transferred to the Accident and Health Department are and shall be the property of the said Department free from any claim of the Participating Department, or the holders, present or future, of participating policies.

It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets of

3049 the Participating Department, and its business, and the receipts in respect of said business shall, subject to the limitations hereinafter contained, be appropriated and held as absolutely for the benefit of and to the security of the policies and policy holders of that Department as though they belonged to a mutual insurance company carrying on no other business; and, to the extent of the reserves from time to time required on the policies and policy liabilities of said Department, in priority to the claims of all other creditors, past, present, and future, of said Department.

3051 The Board of Directors of the New Company shall, from time to time, and at least annually, transfer from the Participating Department to the funds of the New Company available for its general corporate purposes, such sums as it may deem available, if any, but in no event exceeding in the aggregate ten percent. (10%) of the net profits (before dividends, and without charging thereto cost of acquisition of new business) then accrued on policies of the Old Company reinsured hereunder earned subsequent to the effective date of this agreement (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets, and such reasonable adjustment in the value of any assets, or reserves

- 3052 for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company). Any portions of such ten percent. (10%) not so transferred at any time shall be cumulative, and shall be transferred from time to time thereafter, from profits, and subject to limitations, as aforesaid. Any
- 3053 statute of limitations which might apply to bar the right to require such transfer is hereby waived.

Any surplus from time to time existing in said Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and, after taking into consideration gains or losses on the sale or other disposition of assets, and such reasonable adjustments in the value of any assets, or reserves for anticipated

- 3054 losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company), may be used only for the following purposes:

(a) The payment of policy dividends to policy holders in accordance with the terms of their policies and in such amounts as the Board of



3055 Directors of the New Company may from time to time consider proper and advisable, taking into consideration the amount of earnings and other relevant data.

(b) For the payment of any of the costs and expenses of operation of said Department, including the acquisition and carrying of new business written by said Department in such amounts as the Board of Directors of the New Company may from time to time deem reasonably necessary or desirable.

3056 (c) Necessary working capital may be supplied to said Department from time to time from any moneys available for general corporate purposes; and the Board of Directors of the New Company shall, when in their discretion it shall appear practicable, in subordination to the rights of the policy holders of said Department, and from surpluses accumulated in said Department after the payment of reasonable and appropriate dividends to the policy holders thereof as provided in subparagraph (a) of this paragraph or restore the amount of the working capital so supplied, together with interest thereon at the average rate of interest earned by the New Company during the period, to the sources from which it came.

3057 (d) For the payment into funds of the New Company available for its general corporate purposes of a portion, not exceeding ten percent

3058 (10%) of the net earnings of the participating policies of the Old Company reinsured hereunder, as hereinbefore provided. In computing dividends payable to participating policy holders, any amounts paid under this subparagraph shall be charged against said policies reinsured and no part thereof shall be charged against participating policies issued by the New Company.

(e). Any remaining portion of said surplus  
3059 shall be kept separate and distinct from the funds of all other departments; and shall be held as absolutely for the security of and the benefit of the policy holders of the Participating Department as though it belonged to a mutual company carrying on no other business.

#### Non-Participating Department

(7) The New Company further agrees to  
3060 establish a separate department for its Non-Participating Life Insurance, and to allocate thereto specifically or in tenancy in common that portion of the assets conveyed to it by the Conservator in the ratio in which assets appearing on the books of the Life Department were credited to the Non-Participating Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the opera-

3061 tion of the business of the Old Company by the Conservator, including the writing of new non-participating life insurance by the New Company.

It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets from time to time held in said Non-Participating Department shall, to the extent of the reserves from time to time required on the policies and policy liabilities of said Department, be appropriated, and held as absolutely for the benefit of and to the security of the policies and policy holders of said Department as though they belonged to a company carrying on no other business, and in priority to the claims of all other policy holders or creditors, past, present or future, of the New Company.

3062

Any surplus from time to time existing in said Non-Participating Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, sub-

3063

# MICROCA

TRADE MARK



## MICROCA EDITIONS,

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3064 ject only to readjustment upon the order of the  
Commissioner made in the course of or as a re-  
sult of any examination of the New Company)  
may from time to time be used for the general  
corporate purposes of the New Company subject  
to any express limitations herein contained.

Accident and Health Department

3065 (8) The New Company further agrees to  
establish a separate department for its Accident  
and Health Insurance (including Non-Can Poli-  
cies), and to allocate thereto the assets conveyed  
to it by the Conservator which had been cred-  
ited to the Accident and Health Department of  
the Old Company on its books as of July 22,  
1936, and those assets of the book value of One  
Million, Seven Hundred Ninety-two Thousand,  
One Hundred Eighteen and 97/100 Dollars  
3066 (\$1,792,118.97) heretofore transferred by the  
Conservator to the Accident and Health Depart-  
ment, subject to such changes as may have been  
made therein in the ordinary course of the opera-  
tion of the business of the Old Company by the  
Conservator, including the writing of new acci-  
dent and health insurance by the New Company.

It is hereby agreed by the New Company, and  
all persons accepting reinsurance hereunder do  
by such acceptance agree, that the assets from



3067 time to time held in said Department shall, to the extent of the reserves from time to time required on the policies and policy claim liabilities of said Department, be appropriated for the benefit of and to the security of the policies and policy claim liabilities hereof in priority to the claims of all other policy holders or creditors, past, present, or future, of the New Company.

3068 Any surplus from time to time existing in said Department (after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of  
3069 the New Company) may from time to time be used for the general corporate purposes of the New Company subject to any express limitations herein contained.

#### Inter-Departmental Transactions

(9) Neither anything in this agreement contained, nor the separating of the business of the New Company into Departments, as aforesaid, shall be deemed to prevent the apportion-

3070 ment among Departments of their fair and equitable shares of expenses; nor the exchange, upon a fair and equitable basis, of assets between Departments; nor reinsurance between Departments in the ordinary course of business and at customary reinsurance rates. Any determination by the Board of Directors of the New Company with respect to any such apportionment or exchange shall be final and conclusive upon all  
3071 persons interested, subject only to adjustment upon order of the Commissioner made in the course of or as a result of any examination of  
the New Company.

Reinsurance and Assumption of Non-Can Policies.

(10) The New Company does hereby re-insure and assume, as of the effective date of this agreement, the liability of the Old Company or of the Conservator, whether incurred in his name as Conservator, in the name of the Old Company, or in the name of the New Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the effective date of this agreement, subject, however, to the terms, conditions, and limitations, and only to the extent, hereinafter specifically

3073 provided; and subject, further to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

3074 Terms, Conditions, Limitations, and Extent of  
Reinsurance and Assumption of Non-Can  
Policies.

(11) The New Company does not assume any liability for monthly benefits on Non-Can Policies reinsured hereunder unless the disability commenced prior to the effective date of this agreement and notice of claim was filed in accordance with the terms of the policy, and in no event later than twenty (20) days after the effective date of this agreement, except to the extent of the following percentages of the monthly disability benefits originally provided under said policies according to the following premium classes respectively (but subject to restoration of monthly benefits as hereinafter provided):

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Percentage  
of Original  
Monthly  
Benefit  
Assumed

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Prem. Class	Issued Under Rate Books	Policy Forms	Issued Under Policy Numbers	By New Company
1918	A1445-A-1445Z A1445Y-A1445X A1445W	A231 to A288 inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712000 4730901 to 4731100	20%
1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A294 inc. A365-A366	4628001 to 4700000	35%
1926	A1958-A1958Z A1958Y	A382-A383 A386-A387 A387Z	5500001 to 5600000	45%
1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	55%
1931	A2367	A753 to A756 inc. A763-A764	5620001 to 5635000	65%
1932	A2432-A2432Z A2499 A2499	A775 to A780 inc.  Aggregate A1216 to A1221 inc.	5635001 to 6000000  6500001 to 7000000	90%  90%
1935	A2567	Aggregate A1226 to A1229 inc.	7000001 to 7100000	90%

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business, except in states where such filing is not required by law.

3079 Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments at such rates on such policies, to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments as originally provided in his policy.

Reinstatement of Lapsed Non-Can Policies

3080 (12) The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies other than Non-Can Policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 10 and 11 hereof.

Payment of Claims on Non-Can Policies in  
Respect of Disabilities Existing Prior to  
Effective Date of this Agreement

3081 (13) The New Company shall be obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of this agreement with respect to which claims or notices of claims were duly filed in accordance with the terms of such policies, and in any event not later than twenty (20) days after the effective date of this agreement, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the term and

3082 provisions of such Non-Can Policies, and subject to the terms of any such settlement agreements; and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

Restoration of Benefits under Non-Can Policies

3083 (14) The Board of Directors of the New Company shall from time to time transfer from the funds of the New Company available for its general corporate purposes to a special fund for the restoration of benefits under Non-Can Policies in such manner as the Board of Directors with the approval of the Commissioner may from time to time determine, such amounts as said Board of Directors in its discretion shall determine to be not reasonably required for the reasonable, proper and profitable conduct of the operations of the New Company as a going concern. At time of any examination of the New Company by the Commissioner, the Commissioner may require the transfer of additional funds to such special fund, to the extent such additional funds available for general corporate purposes are in his opinion available without interfering with the proper and profitable conduct of the business of the New Company as a going concern.

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- 3085 The moneys and other assets from time to time held in such special fund shall be used by the New Company, with the approval of the Commissioner, and in such manner as he may from time to time require, for the purpose of paying additional disability benefits to holders of Non-Can Policies then, thereafter, or theretofore entitled thereto, in excess of the amounts required to be paid under paragraph 11 hereof, to the end that the benefits originally provided in
- 3086 said Non-Can Policies as written may eventually be fully paid, including eventual full payment of benefits becoming due prior to the time of such restoration, with interest on deferred restoration payments of such benefits at the rate of three and one-half per cent. ( $3\frac{1}{2}\%$ ) per annum. The extent and manner of the restoration so required or approved by the Commissioner shall be binding upon all holders of Non-Can Policies, and all other persons interested therein.
- 3087 The New Company may at any time, with the approval of the Commissioner, transfer all of such special fund to the reserves for Non-Can Policies, and, with the approval of the Commissioner, may fully assume and reinsure all Non-Can Policies hereby partially and conditionally reinsured, to the full amount thereof and in accordance with the terms thereof as written; and if the Commissioner at the time of any examination of the New Company shall determine that in his opinion the amount of such

3088 special fund is sufficient to permit the establishment therefrom of adequate reserves for the full reinsurance of such Non-Can Policies, he may require such transfer and full reinsurance.

Upon such full reinsurance with the approval of or in accordance with the requirements of the Commissioner, the benefits on Non-Can Policies shall be deemed fully restored.

3089 After the benefits on Non-Can Policies shall have been fully restored, the said special fund shall be abolished, and any assets remaining therein at that time shall be available for the general corporate purposes of the New Company.

3090 The New Company shall be under no obligation to pay or restore the full benefits under Non-Can policies as originally provided therein, except in the manner and to the extent hereinbefore described; provided, that if title to all or substantially all of the assets of the Accident and Health Department of the New Company shall hereafter be transferred, by voluntary act (other than by statutory merger or consolidation) or by operation of law, to any person who does not in connection with such transfer assume all of the obligations of the New Company to holders of Non-Can Policies, including obligations to restore the benefits thereunder in substantially the manner in this paragraph 14 provided, then and in that event the New Company will be deemed to have fully reinsured and

3091 assumed all of the Non-Can Policies, including the obligation to pay in full all installments of the disability benefits originally provided to persons theretofore entitled thereto.

Assumption of Claims against Old Company

(15) The New Company hereby assumes and agrees to pay in full:

(a) All costs and expenses of the Conservator, including attorney's fees fixed and approved as required by law.

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(b) All Federal taxes finally determined to be due from the Old Company. The United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of the New Company as it had against the assets of the Old Company had these proceedings not intervened,

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and the New Company agrees that the United States shall have the same remedies against it and its assets with regard to the collection of such taxes as the United States had against the Old Company. No provision of this agreement shall be construed as limiting the operation of the provisions of this subparagraph; nor shall the assets of the Old Company be so valued or the amount of the reserves so redetermined as to prejudicially affect the rights or remedies of the United States. In consideration of the forbearance on the part of the United States at this time to enforce payment of its taxes, all parties

3094 hereto agree that the right of the United States to enforce the provisions of the agreement shall be as full and complete as if the United States were named a party hereto.

It is agreed that the foregoing subparagraph (b) shall be embodied in and become a part of the Court's decree of confirmation.

(c) Taxes legally due from the Old Company to any State of the United States, to any County, or to any political subdivision.

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(d) Wages, salaries, and pensions legally due to persons employed by the Old Company for services rendered, and current bills and expenses, other than insurance liabilities, in connection with the operation of the business of the Old Company, incurred prior to July 22, 1936, and remaining unpaid, subject of course to any defenses the Old Company may have had thereto.

Assumption of Claims against Conservator

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(1) The New Company agrees to indemnify the Conservator against any and all claims and liabilities incurred by him in his capacity as Conservator in connection with the operation of the business of the Old Company, whether in his name as Conservator, in the name of the Old Company, or in the name of the New Company.

Assumption of Claims against Liquidator

(17) In the event the Commissioner shall hereafter be appointed Liquidator of the Old

**3097** Company, the New Company agrees to assume, and does hereby assume and agree to pay, all costs and expenses of such Liquidator, including attorney's fees, fixed and approved as provided by law. The New Company further agrees to pay, and does hereby agree to pay to the Liquidator for payment to claimants an amount equal to the sum of all claims against the Old Company filed with the Liquidator and finally allowed; provided, however, that the New Company shall not be required to make any payment or payments on account of any claims so filed with the Liquidator except to the extent and in the manner hereinafter provided (but the New Company, with the consent of the Commissioner, may waive the foregoing limitation and anticipate any such payments):

**3098** (a). The New Company will, as of the effective date of this agreement, with the approval of or in accordance with the requirements of the Commissioner, establish reserves against all policies and policy liabilities of the Old Company subject to assumption or reinsurance hereunder (but, with respect to Non-Can Policies, only to the extent described in paragraphs 11 and 13 hereof). If any policyholders or policy claimants shall elect to reject assumption and reinsurance hereunder, the New Company agrees to pay to the Liquidator, immediately after the time for filing claim, with said Liquidator shall

3100 have expired, an amount equal to the reserves so originally established against their policies or claims.

(b) Whenever, pursuant to the provisions of paragraph (14) hereof, any sums are transferred to the special fund for the restoration of benefits under Non-Can Policies, the New Company shall pay to the Liquidator a further sum of money bearing the same ratio to the moneys so transferred as the Non-Can Policies (evaluated as 3101 hereinafter provided) whose holders have rejected reinsurance hereunder and upon which claims have been filed in the liquidation proceedings as aforesaid, bears to the Non-Can Policies (evaluated as hereinafter provided) whose holders have accepted reinsurance hereunder.

3102 Until such time as the measure of the claims, to the allowance of which holders of Non-Can Policies who file their claim in liquidation proceedings under the laws of the State of California are entitled, shall have been determined to the satisfaction of the Liquidator and he shall so notify the New Company in writing, Non-Can Policies shall, for the purpose of this subparagraph, be evaluated on the basis of the percentage established by paragraph 11 hereof of their monthly benefit originally provided, whether or not the holders thereof have accepted reinsurance hereunder.

When the measure of the claim to the allowance of which holders of such policies are en-



3103 titled, as aforesaid, shall have been determined to the satisfaction of the Liquidator, and he shall so notify the New Company in writing. Non-Can Policies shall thereafter be evaluated for the purposes of this subparagraph, on the basis of allowable claim, whether or not the holders hereof have accepted reinsurance thereunder; ~~but~~ subject to readjustment as herein-after provided in case of any final determination by the courts of California of any other measure.

3104 In the event payments have been made under any evaluation which is later altered as herein-before provided, a recomputation shall be made; and if as a result thereof it appears that there has been an overpayment to the Liquidator, he shall immediately refund to the New Company the amount of such overpayment; but if as a result of such recomputation it shall appear that there has been an underpayment to the Liquidator, the New Company shall adjust such under-

3105 payment solely out of funds available for its general corporate purpose, in the manner and upon the terms provided in paragraph 14 hereof for the creation of the special fund where referred to, but in priority to the claims of such fund.

(c) Any remaining amount necessary to pay and discharge the claims as aforesaid shall be paid at the time benefits under the Non-Can Policies are fully restored.

3106 (d) The aggregate of the payments to be made in subparagraphs (a), (b), and (c) hereof, shall not exceed the full amount of claims finally allowed in the Liquidation proceedings as aforesaid. Any moneys paid hereunder and remaining in the hands of the Liquidator after all claims filed with him and finally allowed have been paid, shall be by him returned to the New Company.

3107 (18) Any payments made by the New Company to the Liquidator under the provisions of paragraph 17 hereof may be made in cash or in securities or other assets satisfactory to the Liquidator taken at a valuation satisfactory to him. If payment is made otherwise than in cash, the Liquidator may, at any time, return any of such securities or other assets to the New Company at the valuation at which the same were taken, and the New Company shall substitute therefor cash or other securities or  
3108 assets as aforesaid.

Proceeds of Assets Held by Conservator or  
Liquidator

(19) The conservator, or, if the Commissioner is hereafter appointed Liquidator of the Old Company, such Liquidator, shall proceed in such manner and at such time as he deems proper, subject to the provisions of paragraph 20 hereof, to realize upon the assets still held by him as Conservator or as such Liquidator.

3109 In consideration of the various covenants of the New Company herein contained, and for the purpose of protecting holders of Non-Can Policies and of assuring an equitable division of the assets in liquidation among all policyholders and creditors of the Old Company, the Conservator agrees, for himself, and for the Liquidator as his successor in title, that the proceeds of any of such assets (other than assets received under the provisions of paragraph (17) hereof)

3110 which may hereafter be received by him (or by the Liquidator as his successor in title) shall be used in the manner and only in the manner hereinafter in this paragraph 19 described; and a lien or charge is hereby established upon said proceeds accordingly;

(a) Said proceeds and any part thereof may be used by the Conservator or Liquidator for the payment of any of his costs or expenses of administration, including attorney's fees fixed and

3111 approved as provided by law; and any claims having preference in the liquidation proceedings by the laws of the United States or by the laws of the State of California; and thereupon the obligation of the New Company to pay such costs, expenses, or claims shall be released pro tanto.

(b) In the event benefits under Non-Can Policies shall not theretofore have been fully restored as provided in paragraph 14 hereof, a portion of the remaining proceeds (but not ex-

**3112** ceeding the amount required to provide complete restoration of the benefits under Non-Can Policies) in the ratio which exists between the Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof) whose holders have accepted reinsurance hereunder, and all Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof), whether their holders have accepted reinsurance, or have rejected reinsurance hereunder, and have filed **3113** claims in the liquidation proceedings, shall be paid to the New Company, and by it transferred to the special fund described in paragraph 14 hereof.

In the event payments have been made hereunder under any temporary evaluation which is later altered as hereinbefore permitted, a recomputation shall be made; and if as a result thereof, it appears that there has been an underpayment from the Liquidator, he shall immediately adjust **3114** such underpayment from funds in his hands; but if as a result of such recomputation it shall appear that there has been an overpayment from the Liquidator, the New Company shall repay to the Liquidator from the special fund established pursuant to paragraph 14 hereof when and as there are sufficient moneys therein, (but in priority to the rights of holders of Non-Can Policies who have accepted reinsurance hereunder to restoration of their benefits) the amount of such overpayment.

3115 (c) Any portion of such proceeds remaining after making the payments described in subparagraphs (a) and (b) hereof shall be used to pay and discharge claims filed with the Liquidator and finally allowed.

(d) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b), and (c) hereof shall be paid to the New Company for the purposes of the special fund described in paragraph 14 hereof,  
3116 to the extent the same may be required to provide full restoration of the benefits under Non-Can Policies.

(e) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b), (c) and (d) hereof shall be disposed of by the Liquidator in the manner provided by law.

Mutualization and Disposition of Stock  
of New Company

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(20) Neither the Conservator, nor, if one be appointed, the Liquidator, of the Old Company, shall dispose of any of the stock of the New Company except as follows:

(a) At any time between July 1, 1946, and January 1, 1948, and thereafter so long as the Conservator or a Liquidator of the Old Company may continue to hold any or all of said stock, ten percent (10%) of the holders of

- 3118 participating policies of life insurance entitled to vote at a policy holders' election on a proposal for voluntary mutualization of the New Company, whether those reinsured hereunder or those issued by the New Company (each policy holder for this purpose being regarded as one person regardless of the number of policies owned or amount of insurance held) may request the New Company to create an Appointing Committee as hereinafter provided to exercise the duties and
- 3119 functions hereinafter specified in respect of a proposed voluntary mutualization of the New Company, in accordance with the laws of the State of California in effect at the time of said request, or, if said laws then so permit, of any one or more departments thereof. Such request shall specify the department or departments of the New Company desired to be mutualized.

3120 Upon the receipt of such request the New Company shall create an Appointing Committee consisting of the then President of the Association of Life Insurance Presidents, the President of Leland Stanford Jr. University, and the Provost of the University of California at Los Angeles, or persons occupying similar positions if their or any of their titles shall have been changed. In the event any one or more of such persons shall refuse or be unable to act, the remaining member or members shall fill the vacancy or vacancies thereby created by their



**3121** appointment in writing of another person or persons of similar position and standing. If all of said persons refuse or are unable to act, the Court or any Judge thereof shall, on the application of the Commissioner, designate an Appointing Committee consisting of three (3) persons of similar position and standing. Said Appointing Committee, acting through not less than a majority of its members, shall designate a Price Determination Committee of not less than

**3122** three and not more than five (5) persons skilled in matters of insurance company valuation, which committee, acting through not less than a majority thereof, shall determine whether in their opinion the proposed voluntary mutualization of the New Company, or of the department or departments thereof specified in said request can then be practicably accomplished having due regard to the interests of all persons interested in the New Company. If it be determined that

**3123** such mutualization is not then practicable no further steps shall be taken in connection with a possible mutualization of the New Company under the provisions of this subparagraph until at least six months after the date of such determination. If in the opinion of a majority of the members of the committee such mutualization is then practicable, the committee shall determine the proper price to be paid upon such mutualization and appropriate terms of payments thereof; said de-

**3124** termination shall not be made, however, prior to January 1, 1947.

If, at the date of the appointment of such committee the New Company shall have in force Participating Life Insurance written subsequent to the effective date of this agreement in an amount in excess of its Non-Participating Life Insurance written during the same period, one-half ( $\frac{1}{2}$ ) of such excess shall, for the purpose of fixing the proper price to be paid (but for no other purpose) be deemed to be, and shall be valued as; Non-Participating Life Insurance. If at the time of such appointment, there shall have been transferred from the Participating Department in accordance with the provisions of subparagraph (d) of paragraph 6 hereof, less than ten percent. (10%) of the then accrued earnings described therein, or if there shall have been transferred to the Participating Department any working capital pursuant to the provisions of subparagraph (c) of said paragraph 6, any unpaid balance thereof shall, for the purpose of fixing the proper price to be paid (but for no other purpose) be deemed to be a debt when due and matured. Said Committee shall in its report to the New Company include a plan of mutualization of the New Company, or of the department or departments thereof specified in said request of the policy holders. Such plan shall specify, in addition to any other relevant

3127 matters, the price to be paid, the terms of payment, and the persons by whom and the manner in which the right to vote the stock of the New Company is to be exercised pending complete payment of the purchase price. In this connection the said Committee, if it deem it advisable, may provide in the plan for the creation of a voting trust, designate the initial trustees, and make provision for the appointment of their successors. Unless the benefits under Non-Can

3128 Policies have theretofore been fully restored and claims against the Liquidator fully paid, such plan shall further provide that such mutualization shall not affect the provisions of paragraph 17 or of paragraph 14 hereof or the right of holders of Non-Can Policies to the restoration of benefits from the sources and in the manner therein provided.

The New Company agrees that within sixty  
3129 (60) days after the making of such report (unless said report shall be to the effect that mutualization is not then practicable) it will mail copies thereof to all of its policy holders entitled to vote upon such plan or plans of mutualization if submitted according to law. If within one hundred twenty (120) days after the mailing of such notice, ten percent, (10%) of the policy holders entitled to vote upon any such plan or plans (each policy holder being for this purpose regarded as one person regardless of the number

- 3130 of policies owned or amount of insurance held) shall request in writing the submission thereof, the New Company will promptly submit the same in accordance with the laws of the State of California then in effect. The Conservator for himself and for any successors in the ownership of said stock claiming under him in any manner other than through a sale of said stock pursuant to the provisions of subparagraph (d) hereof agrees to consent and hereby consents as the
- 3131 holder and owner of the stock of the New Company to such plan of mutualization. In the event said mutualization plan is adopted, the Conservator, or a Liquidator as aforesaid, shall dispose of such stock in accordance with such plan. The expenses of the foregoing proceedings including costs, fees, and expenses of the Price Determination Committee, shall be borne by the New Company; and, unless the proposed plan of mutualization is consummated, shall be charged
- 3132 to the Participating Department thereof.

In the event the Price Determination Committee has been appointed as herein provided prior to January 1, 1948, said Committee shall have the power to extend the time within which mutualization may be effected hereunder for such period or periods of time as it may deem necessary for the orderly completion of mutualization proceedings as herein provided.

- 3133 (b) If at any time prior to the expiration of the option to mutualize a plan of merger, consolidation, reorganization or reinsurance of the New Company is presented to the New Company, or to the Conservator or Liquidator, which in the opinion of the Board of Directors of the New Company cannot be consummated without the elimination of the provisions for mutualization herein contained, the new Company may create an Appointing Committee in the same
- 3134 manner as though the proceeding were under subdivision (a) of this paragraph. Said committee, acting through not less than a majority of its members, shall designate a committee of not less than three nor more than five persons, skilled in matters of insurance company administration and management. The committee so designated shall, acting through not less than a majority of its members, determine whether or not such plan of merger, consolidation, reorganization or reinsurance is practicable and desirable,
- 3135 having due regard to the interests of all persons interested in the New Company. If the committee determine that such plan is practical and desirable it shall determine a reasonable time which should be allowed for the consummation of the plan. Thereupon the New Company with the written approval of the Conservator or Liquidator, if then there be one, may submit to a vote of the policy holders (voting in the manner then prescribed by the laws of the State of



3136 California relating to voluntary mutualization) a proposal to suspend the mutualization provisions of this agreement for the time fixed by the committee, which proposal shall contain a brief description of the plan. If a majority of the policy holders so voting (but not less than ten percent. (10%) of those entitled to vote) vote in favor of the proposal, said provisions for mutualization shall be suspended for the time so specified and for the sole purpose of consummat-

3137 ing the particular plan; and said plan may be consummated within said time free from said provisions and as though no such provisions had ever been contained in this agreement; but unless said plan be consummated within such time said provisions ipso facto shall become fully effective as though there had been no suspension thereof.

The New Company shall, however, at least fifteen (15) days before any vote of policy holders is called under the provisions of this  
3138 subparagraph, give written notice to each of its General Agents of the intention to call or take such vote. Such notice shall be deemed sufficiently given if and when it is deposited in the United States mails in a properly stamped container, addressed to such General Agent at his latest address appearing on the records of the New Company.

(c) At any time while the stock of the New Company is held by the Conservator or the



- 3139** Liquidator and has not been sold by him the Old Company shall have the right to pay to the Conservator or to the Liquidator the full amount then required by the New Company to complete the restoration of Non-Can benefits and also the amount required by the Conservator or Liquidator to complete the payment of all his claims and liabilities. In the event the benefits on Non-Can Policies shall have been fully restored from earnings of the New Company, contributions of
- 3140** the Old Company, or its shareholders, or otherwise, and all expenses of and claims against the Conservator or Liquidator of the Old Company have been fully paid, the Conservator or such Liquidator shall, upon order of the Court, distribute the stock then held by him in the manner provided by law; provided, however, that if such distribution is made prior to the expiration of the option to mutualize granted in subparagraph (a) of this paragraph 20, the distributees and
- 3141** their successors in the ownership of said stock, shall remain bound, until the expiration of said option, to the aforesaid consent to any mutualization plan of the New Company proposed in accordance with the provisions of subparagraph (a) of this paragraph 20.

The Conservator or Liquidator shall cause to be endorsed upon the certificates evidencing the ownership of such stock an appropriate legend giving notice of the said option to mutualize;

3142 and the New Company shall cause a similar legend to be endorsed upon all certificates into which the same may be transferred prior to the expiration of said option.

(d) In the event the Conservator or Liquidator shall at any time determine that conditions ~~are such as to require~~ a sale of said stock, or any thereof, for the protection of the estate in conservation or liquidation, the New 3143 Company, or its policy holders, he may sell the same upon order of the Court, made after a proper showing of the necessity for such sale upon a full hearing, of which hearing notice shall be given to such parties as the Court may determine are interested therein, and in such manner as the Court may direct.

(e) It is the purpose, spirit, and intent of 3144 this agreement that, unless the provisions for mutualization are eliminated pursuant to the provisions of subparagraph (b) of this paragraph 20, the stock of the New Company shall not be sold or disposed of prior to the full restoration of benefits under Non-Can Policies except by proceedings for mutualization, so long as a reasonable probability of completing restoration of benefits under Non-Can Policies shall continue; and also, to the end that benefits under Non-

**3145** Can Policies may be restored as early as practicable, the New Company declares that it will be its policy, at all times while its stock is held by the Conservator or Liquidator, so far as is reasonably practicable in the ordinary and reasonable conduct of its business, to endeavor to write new Non Participating insurance in an amount equal to or in excess of the amount of new Participating Insurance written by it.

**3146** (f) If the provisions of this paragraph 20, or of any one or more of the subparagraphs hereof, should be contrary to law or illegal or void, then such paragraph, subparagraph, or subparagraphs, shall be null and void, and shall be deemed separable from the remaining covenants and agreements in this agreement contained; and shall in no way affect the validity of any of the remaining provisions of this agree-

**3147** ment.

#### Agents

(21). The New Company hereby assumes all obligations of the Old Company under agency contracts, provided the other party thereto accepts assumption of his contract by the New Company and agrees to continue bound thereby; provided, however, that the New Company shall not assume or be bound by any agreement or

3148 agreements which the Old Company may have made with agents with respect to the payment of commissions on any policies after lapsation. For the purpose of determining Agent's commissions, the reinsurance of policies of the Old Company under this agreement shall be deemed a continuance of existing policies, and not the writing of new insurance by the New Company.

#### Moratorium

3149 (22) A Moratorium shall be and is hereby imposed upon all cash surrender values and policy loan (except loans for the purpose of paying premiums due or to be due within thirty (30) days of the loan date on the same policy or on policies of any form (issued with respect to the same person) for a period expiring November 22, 1936; and provided, that the period or extent of this moratorium may be extended or re-  
3150 stricted from time to time by ex parte order of the Court made on the application of the Commissioner.

The provisions of this paragraph shall not, however, apply to any increases in values that are accumulated from premium payments or loan repayments which are received subsequent to the effective date of this agreement.

**3151** During such period as this moratorium is in effect, the cash surrender option of all policies of the Old Company shall be considered as non-existent, except as provided above, and all policy holders who do not pay their premiums, and who are entitled under their policies to a guaranteed value, will be restored to the automatic non forfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy.

**3152**

#### Notice

**3153** (23) The New Company shall mail as promptly after the making of the order approving this agreement as shall be reasonably practicable to the insured named in all policies and supplementary contracts of the Old Company in force at the effective date of this agreement, and any assignees thereof of record, a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. There shall also be included therewith a notice referring to the provisions of paragraph 24 hereof with respect to the manner in which election or rejection

3154 of the reinsurance and assumption hereby contained must be manifested. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policy Holders and  
Claimants and the Effect Thereof

(24) Policy holders and policy claimants of the Old Company may elect to accept or reject the reinsurance and assumption hereunder of his policy, contract, or claim at any time within seventy-five (75) days after the entry of the order approving this agreement. The filing with the New Company after the entry of the order of the Court approving the agreement of any claim or proof of loss shall constitute an acceptance of this agreement and a waiver of any right to reject the same. Any policy holder or policy claimant who shall fail to notify the New Company, in writing, of his rejection within said period shall automatically be deemed to have assented to and become bound by this agreement, and entitled to the benefits hereof.

3156 The filing of a claim with the Liquidator shall, unless such claim is withdrawn within seventy-five (75) days after the entry of the order of the Court approving this agreement, be deemed a rejection of such reinsurance and assumption. The New Company may nevertheless, with the consent of the Commissioner, and upon such terms as the New Company in its sole discretion may



**3157** desire to impose, permit the withdrawal of a rejection whether or not the period for election herein fixed shall have expired, and permit the person so withdrawing his rejection to accept the reinsurance and assumption herein contained.

Any person electing to accept the reinsurance and assumption herein contained shall thereby be deemed to have entered into a novation with the New Company, and to have released the Old Company from all claims, liabilities, or obligations with respect to his policy or policy claim hereby assumed or reinsured, whether wholly or partially assumed or reinsured.

#### Conservator Not Personally Liable

(25) No personal liability on the part of Samuel L. Carpenter, Jr. is assumed under this agreement, but he is bound by the provisions of this agreement only in his capacity as such Conservator or as Liquidator of the Old Company.

**3159** All undertakings and obligations herein set forth as undertakings or obligations of the Conservator are made only in his said capacities and to such extent as he had authority to make the same, and the Conservator makes no warranty of his authority to make the same.

#### Liability of New Company Limited Hereby

(26) It is understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company

3160 except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express provisions of this agreement, which may be brought by any policy holders, policy claimants, creditors, or stockholders of the Old Company.

#### Assignability of Agreement

3161 (27) This agreement and all rights, duties, and obligations hereunder shall inure to the benefit of and be binding upon the respective parties hereto, their several heirs, executors, administrators, successors, and assigns.

#### Approval of the Court

3162 (28) This agreement shall not become binding upon any party hereto unless and until it shall have been approved by an order of the Court; and when so approved shall constitute an independent agreement, superseding all prior agreements; and also an amendment of the agreement of July 22, 1936, relating to the reinsurance by the New Company of the business of the Old Company in such manner that said agreement, as amended, shall read in its entirety in the language of this agreement.

In Witness Whereof, the parties hereto have executed this agreement as of July 22, 1936, at the hour of one o'clock P. M. Pacific Standard

3163 Time, but in fact on the ..... day of October, 1936.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By .....

Its Vice-President

(Corporate Seal)

Attest: .....

Its Asst. Secretary

"NEW COMPANY"

3164

SAMUEL L. CARPENTER, JR.

Insurance Commissioner of the State of California, as Conservator of The Pacific Mutual Life Insurance Company of California

The undersigned, Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, does hereby give his written consent to and approval of the foregoing Rehabilitation and Re-

3165 insurance Agreement.

.....  
SAMUEL L. CARPENTER, JR.

as Insurance Commissioner of the State of California.

pp: vb: lg: rg: lb

9/24/36

Endorsed: Filed Oct. 9, 1936, 11:24 a. m.  
L. E. Lampton, county clerk; by J. C. Gordon,  
deputy.

**3166** In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., etc., petitioner, vs.  
The Pacific Mutual Life Insurance Company of California, respondent. No. 404,673.

**Proposal of Plan of Rehabilitation.**

*To the Honorable Superior Court of the State of California, in and for the County of Los Angeles, and—*

**3167** *To Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California:*

The undersigned, Roscoe R. Hess, a party in interest in the above entitled matter, hereby proposes for consideration by the Court and the petitioner here, the execution of a rehabilitation agreement by the petitioner and the New Company to embody the following general provisions:

**General Object of the Plan.**

**3168** Use the New Company heretofore established as the means of true rehabilitation of the Old Company by the method of increasing assets instead of by reducing liabilities, with the object of continuing to render thereby the public service for which insurance companies are organized.

**General Structure of New Company.**

Establish six departments in the New Company, to be generally known as:

1. Old Non-Participating Life Department, to reinsure Non-Participating Life insurance

3169 policies (and to assume annuity contracts) of the Old Company;

2. Old Participating Life Department, to reinsure Participating Life Insurance policies of Old Company;

3. Accident Department, to reinsure Accident and Health insurance policies of Old Company, (not including Non-Can policies) and to write new accident and health insurance of the same character;

3170 4. Non-Can Department to reinsure Non-Can policies of Old Company, on basis and conditions hereinafter set forth, but to write no new business;

5. New Non-Participating Life Department, to write new Non-Participating Life insurance and annuity contracts;

6. New Participating Life Department, to write new Participating Life Insurance;

3171 Create capital of the New Company in the sum of \$1,000,000 and an initial surplus of \$2,000,000, using therefor the assets of the Old Company in the general manner proposed by the Commissioner.

Transfer assets of the Old Company to the New Company in the general manner proposed by the Commissioner's new plan, crediting the same to the first four departments mentioned in the list above, maintaining the assets themselves (and their proceeds) inviolate for the sole use

**3172** and benefit of the said four departments, respectively, to the exclusion of each other and to the exclusion of the two new departments of the New Company, except as hereinafter provided.

Transfer all rights of action against officers of the Old Company, to the New Company as an asset of the Non-Can Department.

(Explanation of Result, using figures of December 31, 1935. The amount of the transfer of assets to the Old Participating Life and Old

**3173** Non-Participating Life Departments will have to be shown as a total, as the Convention Examination on file in court does not disclose the segregation between the two departments. However, as of December 31, 1935, the liabilities of the two departments were \$182,178,026.50. The admitted assets of the two Life Departments were \$187,893,222.60 and if assets to the extent of \$3,000,000 for capital and surplus are deducted, the balance would be \$184,893,222.60.

**3174** Apparently the Commissioner has also transferred \$1,792,118.97 to the Accident Department from the Life Departments, thus leaving a balance of \$183,101,103.63, or about \$1,000,000 more than the book liabilities for the Life Departments (\$182,178,026.50).

The exact amount of the assets transferred to the Accident and Health Department can not be set forth due to the inclusion in the Accident Department of the Old Company, of assets for the Non-Can business. However, considering



3175 the 3rd and 4th departments in the foregoing list as a unit, the assets transferred to the books of the New Company for these two departments would be the figure of \$27,023,979.50 as the admitted assets shown on page 11 of the Report of Convention Examination, plus the sum of \$1,792,118.97, or a total of \$28,816,098.47. Upon proper accounting, the segregation of these assets between the Accident and Health Department and the Non-Can Department, could be defined.

3176 Attention is called to the fact that there has been, since December 31, 1935, an appreciation in the value of the assets shown on the books of the Old Company represented by stocks and bonds, that may further increase the total surplus of the New Company, ignoring for the moment, the matter of insufficiency of assets in the Non-Can Department. The matter of this insufficiency and the method proposed of curing it, is subsequently discussed.

3177 If the reserves for the Life Departments have been correctly computed, the Life Departments will be solvent, and likewise the Accident and Health Department under the presupposition that out of the \$28,816,098.47 there will be transferred to the department last mentioned, sufficient money to care for all liabilities. An examination of page 13 of the Report of Convention Examination will show that aside from the liability of \$2,903,928.12 as reserve for unearned

3178 premiums and \$19,643,031.00 and \$24,685,977.00 as reserves for disabilities on disabled lives and active lives respectively, the other liabilities of the Accident Department amount to roughly \$2,600,000.00. Disregarding the matter of unearned premiums, therefore, a sum in the neighborhood of \$25,000,000 could be transferred to the Non-Can Department as reserves for both disabled and active lives.

Of the last mentioned sum of \$25,000,000, 3179 \$19,643,031.00 as the reserve set forth on page 12 of the Report, for disabled lives, would be available therefor, and there would remain approximately \$5,000,000.00 for purposes of a reserve for active lives of Non-Cans.

Method of Operation of Old Non-Participating Life Department, Participating Life Department and Accident and Health Department.

3180 Conduct each of the three departments, Old Non-Participating Life, Old Participating Life and Accident and Health, as separate units, bearing, of course, proper share of general overhead. The Accident and Health Department can continue existing business, and write new accident and health insurance. The Old Non-Participating Life and Old Participating Life Departments, however, would write no new insurance, leaving new life (and annuity) business for the two new departments of the New Company.

3181 Pay agents' commissions in accordance with contracts of Old Company on all of above business.

Pay dividends on old participating life policies in accordance with mortality savings and profits made, less 10% thereof which shall be transferred annually to the Non-Can Department.

Pay all profits made in Old Non-Participating Department annually to Non-Can Department.

3182 Pay all profits made in Accident and Health Department annually to Non-Can Department.

(Comments on Operation. Agents of the Old Company claim, and the figures in pages 7 and 8 of the Report of Convention Examination seem to verify the same, that the Accident and Health business yields a profit of approximately \$500,000 per year to the company. Whatever the amount is, would be transferred to the Non-Can Department.

3183 The Supplemental Report of Convention not filed in the proceedings, and held confidential by the Commissioner, indicates that in 1935 the mortality experience of the company was 57.1% of the American Experience Table in the case of Participating Life Insurance, and 66.1% in the case of the Non-Participating Life Insurance. The percentage of entire new life business represented by Non-Participating Life Insurance has risen from 36.3% of the total new life business in 1932, to 47.3% in 1933, to 62.6% in 1934, and to 77.9% in 1935.

- 3184 The presumption has been that profits arising from the old participating life business were repaid to policyholders in the form of dividends, but it is understood that not all of the profits so arising were in fact so used during the last few years. The justification for the retention of 10% of such profits for transfer to the Non-Can Department is on the theory that such transfer is in lieu of the lien on such policies that should be imposed as a substitute for the ruinous result that would occur to the participating life holders in event of liquidation of the Old Company. The Commissioner has indicated that the entire profit on the participating life business is approximately \$3,000,000 per year.
- 3185

However, the Supplemental Report of Convention Examination raises some question of whether the present rate of dividends to participating life insurance policyholders can be maintained, and even in the last few years the

- 3186 dividends so paid were only as follows:

1932	\$2,894,339
1933	2,243,620
1934	1,704,071
1935	1,763,708

It would therefore be more reasonable to assume that a figure more nearly in the vicinity of \$150,000 to \$200,000 would represent 10% of the net earnings on the old participating life policies that would be transferred to the Non-Can

**3187** Department annually, and perhaps even less as time goes on.

The new life insurance business during the last few years, as indicated from said Supplemental Report, is as follows:

	Total	Non-Participating Percentage of the total
1926	\$94,000,000	26.3%
1927	89,000,000	16.7
<b>3188</b> 1932	57,000,000	36.3
1933	45,000,000	47.3
1934	54,000,000	62.6
1935	58,000,000	77.9

At the end of 1935, participating life policies were in the amount of \$408,120,271 and non-participating \$208,736,136, so that apparently about \$90,000,000 of the latter total has arisen within the last three years. With the realization that expense of acquisition of business makes it

**3189** impossible to make a profit until three years after policies are issued, the profits of the Old Non-Participating Life Department, having no such cost of acquisition to pay for, can be used in part (after transfer to the Non-Can Department, to take care of this cost of new business in the new Participating Life and new Non-Participating Life Departments.

Dividends have been paid during the last several years, and their amount and origin, accord-

3190 ing to the Supplementary Report of Convention Examination, are as follows:

	Accident Dept.	Non-Participating Life Department.
1929	\$600,000	\$220,000
1930	690,925	290,400
1931	601,773	609,840
1932	609,840	508,200
1933	508,200	254,100
1934	0	863,417
3191 1935	0	127,050
	<hr/>	<hr/>
	\$3,010,739	\$2,873,007
	The total was therefore	\$5,883,746

3192 It will be noted that the directors of the Old Company seem to have recognized, at least in 1934 and 1935, that no profit was made in the Accident Department, despite the profits arising from the commercial accident and health insurance business. The same cause that led to the result of such lack of profit, namely, insufficiency of reserves for non-cans, would quite apparently lead to the result of no profit in the entire company, although the propriety of declaring dividends is not an issue in these proceedings. However, the amount of the dividends declared in the early years of the depression might give some rough indication of what might be expected annually from future operations. Moreover, the possibility of recovery from directors who de-



**3193** clared the dividends in 1934 and in January, 1935, should be an asset of the Non-Can Department.

**Method Of Operation Of The New Participating  
And Non-Participating Life Departments.**

**3194** Operate the new participating life department and the new non-participating life departments as at the initiation of a newly organized insurance company in so far as the capital therefor is concerned, which capital is included in the entire capital and surplus of the New Company.

Use the profits of the new non-participating life department (after the establishment of the necessary reserves) for transfer to the non-can department in the same manner in which the profits from the old non-participating life department are used.

**3195** During the period of perhaps three years, absorb the cost of acquisition of new non-participating business out of the amounts transferable to the non-can department as profits from all other departments of the New Company as herein provided.

Do the same with respect to cost of acquisition of new participating business, except to the extent that such cost is ordinarily absorbed by smaller dividends payable to participating holders during the initial period during which such costs are large.

**3196** Use the profits of the new participating life department in payment of dividends to the holders of new participating life insurance policies without any contribution whatever to the non-can department, in order to develop a strong going concern and to that extent to approximate the result of a really mutualized company.

° Restrict the total amount of the new participating life insurance to a reasonable proportion, as in the Commissioner's plan, to not exceed the  
**3197** amount of the new non-participating life insurance, provided, however, that the proportion may be changed by unanimous consent of the board of directors of the New Company.

Comments on operation. It is understood that on new life business, for every \$1.00 of premium receipts during the first year, \$1.60 is expended, as a result of commissions, and medical examination, etc. Assuming \$50,000,000 of new business per year, and an average premium rate of  
**3198** \$30.00 per \$1,000 of insurance, the loss would approximate the sum of \$900,000. In a going concern, such expense is absorbed by profits on old business. Similarly, therefore, the expense would have to be absorbed out of general profits of the New Company, and to that extent would be deducted from the amounts transferred to the non-can department. Under the Commissioner's plan, these costs of acquisition would have to be absorbed, so that if deduction would have to be

3199 made therefor under the plan herein proposed, the same deduction would have to be made under the Commissioner's plan, and thereby make smaller the amount available for restoration of non-can benefits.

#### Method Of Operation Of The Non-Can Department.

Discontinue writing of any new non-can business.

3200 Adopt a more rigorous policy of thorough investigation of the validity of disability claims, both past and future.

Give to the active non-cans two options:

(1) To pay premiums at existing premium rates as set forth in their policies, with benefits reduced to scale in Commissioner's plan, but with restoration of benefits to extent available from transfers to non-can department, as hereinafter

3201 set forth.

(2) To pay the old plus an additional premium at a flat rate of approximately \$20 to \$25 per year for each \$100 of monthly disability indemnity provided in the policy, for a period of ten years, with full benefits payable, but with reduction of amount of the additional premiums after the first year, arising by transfer of profits from other departments to the non-can department, as hereinafter set forth.

**3202** Carry group insurance on lives of all non-cans who elect the second option, and set aside out of the actual surplus of the company enough money at the initiation of the plan, to cover the unpaid additional premiums of those active non-cans who die during the ten year period.

Use existing surplus to extent necessary, by setting aside reserve to cover unpaid additional premiums of those who elect the second option and who reach the age limit mentioned in their

**3203** policies during the ten year period.

Defer the receipt of disability benefits by those active non-cans who elect the second option and who become disabled during the ten year period, to the extent that such postponement is necessary to absorb the unpaid additional premiums collectible during the ten year period.

**3204** Apply the profits from the old non-participating life department, the old participating life department (to the extent of the 10%) the accident and health department, and the new non-participating life department, in restoration of non-can benefits for those who exercise the first option, and in reduction of the additional premium payments paid by those who exercise the second option, in the proportions (as between the two classes) in which the total premiums payable by those in the first class bear to the total premiums (both old and additional) payable by those who elect the second option. Deduct there-

3205 from, however, any deficit arising in the new life departments arising from cost of acquisition of new business. Prorate share of profits allocable to first class, among the disabled members in proportion to their respective reductions of benefit under the Commissioner's scale. Prorate share of profits allocable to second class, among all members, in proportions to their premiums paid.

3206 Give to those non-cans as hereinafter provided, non-assignable participation certificates, carrying interest from date of issuance, to share in the distribution of the \$1,000,000 stock of the company, at the end of ten years, unless the stockholders have restored solvency prior to the expiration of five years.

To those non-cans electing the first option and who never become disabled, issue no certificates.

3207 To those non-cans electing the first option and who do become disabled, issue certificates at the time of each disability payment, in the amount of the deficiency in the payment after using the share of profits available for that purpose.

To those non-cans electing the second option, issue at time of payment of premiums in the increased amount, participation certificates for the amount of the premiums actually paid, after crediting the amounts applied out of profits in reduction of those increased premiums.

**3208** At end of ten year period, distribute the \$1,000,000 stock of the company pro rata among all certificate holders in proportion to the face of the certificates with interest at 6% per annum, unless stockholders of Old Company did not restore solvency during the five year period. Provide that certificates are not a liability of the company, other than for the issuance of the \$1,000,000 stock already in existence.

Reason for the option. The report of convention examination shows an insolvency of \$17,000,000. There are only two ways of curing any insolvency, either by decreasing liabilities (as proposed by the Commissioner), or by increasing assets, (as herein proposed). Reduction of benefits, besides, creating a discrimination as against active non-cans, in favor of life policy holders, runs counter to the primary purpose for which insurance companies are operated, namely, to provide insurance in order to render a public benefit.

**3210** Allegedly the insolvency of the Old Company exists in the fact that there is an insufficient reserve in the form of assets available to pay non-can claims in the future as they accrue. It will be noted that in so far as the ability to pay claims of already disabled non-cans is concerned, the reserve of \$19,643,031.00 necessary therefor will be amply covered by the assets to be transferred to the Non-Can Department in the sum



3211 of approximately \$25,000,000, so that the major concern is with respect to the reserve necessary for the active Non-Cans.

3212 The necessity for a reserve arises from the fact that the actuaries calculate on the one hand the present worth of the future premiums expected to be received from the active non-cans who are of varying ages and who will continue to pay premiums for various periods of time, some of whom will die, others of whom will become disabled and may with some risk, cease to pay premiums if their disability indicates they will never recover, and on the other hand the actuaries calculate the present worth of the anticipated disability payments to be made to the non-cans now active, but some of whom will become disabled. If the present worth of the future premiums does not equal the present worth of the future disability payments, the balance must exist in the form of assets at the present time, 3213 which must draw interest year by year and which together with the income therefrom, will close the gap. The actuaries calculate this deficiency at \$24,685,977.00 as the amount necessary to have on hand now in order to close the gap.

Under the Commissioner's plan, the method of closing the gap (without comments on the discrimination thereby arising) is to leave unaltered the present worth of the future premiums by

- 3214** requiring that the old premium rate be continued in order to retain any benefits, but to decrease liabilities, to-wit, the present worth of the future disability payments, by scaling down the amounts payable, to the various percentages set forth in his plan. That is the Commissioner's method of closing the gap, so that no reserve in the form of present assets will be necessary, the payment of the premiums year by year being sufficient to make the payments on the disability claims payable in the reduced amount to the active non-cans as their claims accrue.

But it will at once be apparent that the gap can similarly be closed by increasing the present worth of the anticipated future premium receipts if the premiums are increased in the proper and sufficient amount.

- 3216** The vice of the Commissioner's plan lies not only in its failure to carry out the primary purpose of an insurance company in affording full protection, but it has the covert purpose of creating a situation of fear and uncertainty in the minds of non-cans who will be reluctant to face the uncertainty of full restoration and who will therefore become discouraged on account of the reduced benefits and thus cause them to lapse. The power entrusted to the Board of Directors to use their discretion to create a "profitable going concern," even at the expense of restoration, has the tendency to compel more and more non-

3217 cans to lapse, especially during the period immediately following the initiation of the Commissioner's plan. Those non-cans who live at a distance and can not familiarize themselves with the financial condition of the company or with the extent to which restoration is being made, will tend to lapse by reason of the uncertainty. The inevitable result, therefore, is to reduce the reserves on account of those who lapse, and, in a short time, when restoration in full is possible

3218 to those who have the tenacity to remain with the company, the stockholders are in a position to recapture a profitable going business free from the obligations incurred by the issuance of the non-can policies. That undoubtedly is the hidden reason for the active support of the Commissioner's plan by many of the stockholders.

The advantage, therefore, of the plan herein proposed, in so far as non-cans are concerned, is that certainty of full benefits replaces uncertainty

3219 if the additional premiums are calculated in order to produce the result of a sufficiency of assets, regardless of whether profits are made in the other departments, and in the last analysis the result must be the same financially, because whatever profits could be used for restoration under the Commissioner's plan, could be used in reduction of additional premiums under the plan herein proposed.

- 3220 Discussion of willingness of active, healthy non-cans to pay additional premiums. The prospect of a lifetime of disability has actuated non-cans in the past to pay their premiums, year by year, even though they have in fact suffered no disability. The older the non-can becomes, the more desirable is the insurance. As herein-after shown, the total outstanding disability indemnity is around \$9,000,000 per month, and, as the total disability payments are around \$4,-
- 3221 500,000 per year, or \$375,000 per month, it will be seen that, roughly speaking, about 4% of the non-cans draw benefits, or about 1 in 25. If any one non-can knew positively that he would not be the one out of the 25 that might become disabled, he would never pay premiums to insure against the contingency. But the individual non-can does not know whether he will be the one to become disabled, but he has been willing to pay nevertheless, just as one insures against accidental death.
- 3222 Many agents and policy holders characterize the disability insurance as their most valuable insurance, and the lapse rate is reported at about 4% per year.

Much is said about "adverse selection against the company," in connection with this insurance. It is suggested that not only is the argument overemphasized, but whatever strength there is to the argument is equally applicable to the Commissioner's plan. In the case of a man threat-

3223 ened with a disabling malady, certainly he would not cease his premium payments, even under the Commissioner's plan, and if there is any lapsation at all, it would be on the part of the healthy one. The larger, therefore, that the group of healthy, premium paying non-cans could be made, the less would be the proportion of claimants, and the more beneficial to the company would be the continuous receipt of premiums from such group. Now what has the tendency to make that

3224 group the largest? Reduction of benefits, with the uncertainty of restoration conduces toward lapse on the part of the healthy non-cans, whereas maintenance of full benefits tends to prevent their lapse, and consequently to prevent the decrease in premium receipts from them. The same motive that has actuated the healthy non-cans to pay in the past, continues to operate to induce them to pay in the future, because it is protection that they want even though there may

3225 be only 1 chance in 25 that they will ever draw benefits. It therefore becomes merely a question of cost and the natural reaction of a healthy non-can is to consider that if benefits in the reduced amount cost a certain amount, query whether the addition of the remaining benefit is not worth the price that it may cost.

It is reported that there are about 49,000 non-cans, and Professor Mowbray, Consulting Actuary for the Commissioner tabulates the monthly



**3226** disability indemnities payable (if all were disabled) as follows:

Date of Policy Issuance	Amount per month
1918 to 1921	\$1,827,522
1921 to 1926	2,480,820
1926 to 1929	3,259,960
1929 to 1931	776,007
1931 to 1932	687,610

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**3227** Total, roughly \$9,000,000 monthly or \$120,000,000 yearly. Total disability payments in 1935 were reported at \$4,528,186.10. Assuming the 49,000 as the number of the non-cans, the average monthly disability indemnity is about \$185 per month. It will also be noted that for every dollar of monthly disability indemnity (\$9,000,000), if two dollars were paid in cash into the company, the insolvency of \$17,000,000 would be completely cured. If every non-can

**3228.** therefore, would pay \$200 in cash to the company, for every \$100 of monthly disability indemnity he carries, the company would be solvent on the figures of the Report of Convention Examination. The instantaneous acquisition of \$17,000,000 from stockholders, or from non-cans, is out of the question. But if every non-can paid \$200 with interest over a period of ten years for every \$100 of monthly disability he carries, the insolvency could be cured. His additional



3229 premium would therefore be \$20 for the first year plus  $3\frac{1}{2}\%$  interest on his deferred payments of \$180 or an additional \$6.30 for the first year. Under the plan, a non-can paying the old flat rate of \$20.00 would pay an additional \$20.00 plus the \$6.30, or a total of \$46.30 and those insuring more recently would be subject to the same additional premium if they desired to insure under the second option.

Under the plan proposed, if each and every 3230 non-can exercised the second option, and if each and every non-can paid the full additional premium with interest for the first year, the additional income available to the non-can department in the first year would be the \$1,700,000 plus interest of over \$500,000,—a quite enormous increase. However, ignoring those who may prefer the first option, and considering that all non-cans exercise the second option, not all of the non-cans would remain alive during the 3231 entire ten years to continue their installments of additional premiums, and some also would become disabled year by year and likewise not pay additional premiums throughout the ten years. Indeed, some of the non-cans would die during the first year of the plan, and would not pay even the first of their ten additional premiums. The deficit arising from cessation of premium payments by those who become disabled can be cared for by a de-

**3232** duction of their total unpaid additional premiums, from the amounts first becoming due on their disability claims. Thus, if a non-can has a \$100 monthly indemnity, pays 9 additional premiums, and becomes disabled in the tenth year, instead of receiving \$100 at the end of his 90 day elimination period, he would receive only \$80.00. Similarly, if he becomes disabled in the first year without paying any additional premium, he would have his deficiency of \$200 deducted, or

**3233** have to wait an additional two months. The hardship thus arising can be alleviated by setting aside a portion of the original surplus, for that purpose.

Coming next to the non-cans who may die during the ten year period, only a rough outline of the operation of the plan can be given. Non-cans are of all ages, but the majority at the present time are between 40 and 48 and originally took out their policies at a time when they had

**3234** already assumed family responsibilities and desired protection from the contingency of disability. The American Experience Table, starting with 100,000 at age 10, shows 76,106 alive at age 40, with 765 dying before 41. For the 49,000 non-cans, therefore, the number dying, according to the table, and assuming 40 years as the average age of all non-cans, would be roughly 500 between age 40 and 41. But the experience of the company shows on general life policies an

3235 experience rate of about 60% of the table which would give a figure of 300 dying between 40 and 41. For purposes of safety, let us assume that 400 non-cans will die during each of the ten years. It can safely be assumed that the 400 dying during the first year would not all die at the beginning of the year but that their deaths would be spread throughout the year, and that half of them would pay their first year's additional premium but that the other half would not.

3236 Remembering that the average policy is for \$185.00 and that it would take \$2 for every dollar of indemnity to cure the deficit, the average policy-holder would have to pay \$370 by way of additional premiums (plus interest). The 400 that would die during the first year would thus cause a shortage of 400 times \$370.00 or around \$150,000, less the few thousand dollars paid by those dying during the first year after having paid the first, and first only, of their ten additional

3237 premiums. Assuming that another 400 die during the second year, the shortage on their account would be less than the figure applicable for those dying during the first year, because those dying in the second year would have paid their first year's additional premium. In all, one could compute the total shortage during the ten years at perhaps \$750,000, or, for safety, at \$1,000,000, due to a rising death rate as the group of 49,000 arrives at a higher attained age

**3238** year by year. This deficit could be taken care of by an appropriation at the outset, of enough of the present surplus to cover the shortage in the premiums receipts mentioned. However, although that might be necessary under rigid insurance regulations, it is apparent that there could be group insurance on the term basis for the entire group of 49,000, which would require only annual premiums, and the amount of these premiums could be absorbed by using so much

**3239** of the profits of the New Company proposed to be transferred to the Non-Can Department from the other departments as might be necessary to insure in an outside company, but such insurance in an outside company would be unnecessary as the New Company is itself in the insurance business.

It is a needless digression to discuss how a non-can shall exercise his option, other than to say that two premium notices can be sent to him, one on the old premium rate with reduced benefits and another showing the total of his old plus the additional premium (including the interest) on the full benefit basis. His payment of one or the other establishes his exercise of option. But, if he does exercise the second option, it must be clear that the present worth of the future premium receipts of the company on account of the non-cans is thereby increased by enough to take care of all of the insolvency if

3241 all non-cans exercise the second option. It is quite as proper to compute the present worth of these additional premiums as to compute the present worth of the ordinary premiums, none of which are sure to be paid.

If some of the non-cans exercise the first option, then the present worth of the future disability payments is reduced, and pro tanto, the insolvency is cured, and if the other non-cans exercise the second option, then the present worth of the future premiums is increased, and pro tanto, the insolvency is cured.

3242 Considering the status of the holder of a policy issued from 1931 to 1932 at age 35, where the benefits under the first option are reduced to 65%, and who continues to pay the premium of \$39.50 specified in his policy for \$100 of monthly disability indemnity, the proposed additional premium of \$20.00 (plus interest) is about proportionate to the additional benefit. For the \$39.50 he would get \$65.00 and for \$20.00 extra he would get the remaining \$35.00. If he had attained an age of over 35 years at time of issuance, his premium is larger than \$39.50 so that for the extra \$20.00 he would be getting the extra \$35.00 per month at less unit cost. Vice versa, if he was under 35, his extra \$35.00 per month would cost proportionately more than the \$65.00 under his reduced benefit.



3244 If it be argued that profits under the first option would raise the benefits above \$65.00 in the case mentioned in the preceding paragraph, it is similarly true that the same profits can be used to reduce the \$20.00 additional premium payments, and under the second option there is the tremendous advantage of payments of disability benefits in full from the outset of the plan. This is a matter of extreme importance to those in the earlier groups, to whom a restoration of \$40.00 per month out of profits, above the \$20.00 guaranteed, would still leave them behind the group already guaranteed \$65.00 per month.

3245 Moreoever, if it is worth while for non-cans to stay in the picture at all with their reduced benefits, it is likewise true that it is similarly worth while to stay in the picture by paying additional premiums because their extra cost is quite reasonable in comparison with their extra benefits, and they have accomplished the fundamental object of protection to the full extent, even if there were no profits at all available to reduce their additional premium payments. If the healthy non-can who insured at 35 years of age in 1932 reinsures at \$65.00 per month for the premium payment of \$39.50, then he has every reason to pay his extra premium for the extra \$35.00 of benefit. Rlaboration of the figures involved is given in order to meet fully the



3247 argument that it is only the non-cans who secretly know of an oncoming disability that would be willing to pay extra premiums. As previously set forth, if a non-can is healthy and does not fear disability, and is willing to accept \$65.00 (to say nothing of accepting \$20.00) then he has every motive to get the full \$100 for the extra premium, if profits are mandatory to use either in restoration of benefits or in reduction of additional premiums.

3248 The next development of the plan proposed, lies in the use of the profits payable from the Old Non-Participating Life Department, the Old Participating Life Department (to the extent of the 10%) and the Accident and Health Department, to the Non-Can Department, in restoration of benefits, and, particularly in reduction of the amount of the additional premiums payable after the first year by those who exercise the second option given to non-cans. If the present

3249 worth of the future premiums has been increased by reason of the liability of non-cans to pay those additional premiums during the period of ten years after they exercise their option, if they are to retain any benefits, that present worth is not lessened if in fact their actual payments of the additional premiums are lessened by the use of profits from other departments of the company. The use of such profits from other departments is a means of taking advantage of

3250 the difference between the two legal ideas of insolvency, one, insufficiency of assets to pay liabilities; and the other, inability to pay obligations as they become due. Under the Commissioner's plan, profits may be used to restore benefits to non-cans, and in the plan proposed, profits must be so used to the extent herein set forth.

3251 If the non-cans are guaranteed that profits must be used by application on their additional premiums after the first year, they have every inducement to initiate the plan by paying additional premiums during the first year, with the hope that profits will substantially lessen their future premium payments. If profits are not in sufficient amount to make such substantial diminutions, then they will not be of sufficient amount to produce much restoration of benefits under the Commissioner's plan.

3252 A better understanding of the purpose of the plan herein proposed can be obtained by canvassing the figures set forth in the Report of Convention Examination. In 1935 non-can premiums, were \$3,557,740.95 and non-can disability payments, \$4,528,186.10, although the figure of \$5,580,621.10 appears in the Supplemental Report. However that may be, if, under the ten year additional premium plan herein proposed, something like \$1,700,000 additional would be received during the first year as the additional premium, to say nothing of the extra money as

- 3253 interest on the balance of the \$17,000,000, the disability payments made to non-cans who were active on December 31, 1935, but who become disabled in the first year, would have to exceed \$1,700,000 plus the interest, before any situation of insufficiency of assets would present itself. The \$4,528,186.10 paid in 1935 represents payments on claims that have arisen over all previous years, so that to require \$1,700,000 for claims arising in the one year 1936 would mean
- 3254 that such claims would have to amount to almost 35% of the claims arising in all previous years.

The use of certain assumptions will further illustrate the provisions proposed. If the holders of non-can policies to the extent of  $\frac{3}{4}$  of the total monthly indemnities of around \$9,000,000 elect the second option, and the other  $\frac{1}{4}$  elect the first option, the additional premium payments by those who elect the second option would be around \$1,300,000 plus interest the first year.

- 3255 Just what the regular or old premiums of these same persons would be, would depend on the rates payable under their policies. An assumption could be made that these regular premiums, instead of being  $\frac{3}{4}$  of the total present premium income of around \$3,500,000 would be only \$2,000,000 and that the other  $\frac{1}{4}$  would pay the other \$1,500,000 of the total \$3,500,000. Those electing the first option would pay \$1,500,000 and those paying the old plus the additional premiums

- 3256 would pay \$2,000,000 plus the \$1,300,000 plus interest. Ignoring interest, their total would be \$3,300,000 the first year. Premiums from both classes would be \$3,300,000 plus \$1,500,000 or \$4,800,000. If the profits for the first year were \$1,440,000, then  $1500000/4800000$  would be used for restoration, or \$450,000 and the other \$990,000 in reduction of the additional premiums in the second year, payable by the  $\frac{3}{4}$  who elect the second option. It will be seen that the
- 3257 \$990,000 would make a very sizable reduction in the additional premiums of \$1,300,000 plus interest payable in the second year, and, if profits are forthcoming, be a powerful inducement to persuade all non-cans to start the plan and elect the second option. Those non-cans who pay the higher/old premiums would share in this reduction to a greater extent than those who insured between 1918 and 1921, as hereinafter provided.

- 3258 At this point it will be illuminating to consider the premium rates charged on policies issued during various years, using age 35 at time of issuance and a 90 days elimination as a basis:

1918 to 1921	\$20.00	\$1,827,522 (monthly
1921 to 1926	\$24.50	2,480,820 indemnity)
1926 to 1929	\$29.50	3,259,960
1929 to 1931	\$36.50	776,007
1931 to 1932	\$39.50	687,610
1932 to 1935	\$52.00	

3259 A flat increase in the premium not proportionate to existing premium rate would create a discrimination between the early policies and the late policies, but the earliest policies are more valuable in that they carry the same benefits, and indeed can be kept in force until a later age than the later policies. The total premiums now paid by the various classes of policies according to year of issuance are not set forth in either the Report filed in court or the Supplemental Re-

3260 port of Convention Examination. An increase of \$20.00 annually for 10 years would, fall more heavily on the later policy holders, and provision can be made to alleviate that situation by prorating the profits transferred by the other departments to the Non-Can Department, in the proportions that premiums are payable by the various holders. Thus if the holder of a policy issued in 1918 at \$20.00 exercises option No. 1, his proportion is on \$20.00 and if the holder of

3261 a policy issued in 1922 exercises option No. 2, his proportion (assuming age 35 at time of issuance) is on \$24.50 plus the \$20.00 additional premium, or on \$44.50, etc. Thus, the holders paying premiums at the higher rates, will get a larger reduction in their additional premiums after the first year of the plan. As between restoration of benefits to those who exercise the first option, and reduction of additional premiums payable by those who elect the second option,



3262 the same general segregation of the profits could be made. This affords an inducement to pay the increased premiums because if  $\frac{1}{4}$  of the total premiums are those paid by persons who elect the first option, only  $\frac{1}{4}$  of the total profits go to restoration, and the other  $\frac{3}{4}$  to reduction of additional premiums.

An examination of the method of computing the reserves for the active non-cans is important for an understanding of the plan proposed, (as well as an understanding of the Commissioner's plan).

3264 If premium receipts year by year were sufficient to pay disability claims, no reserve would be necessary. The actuaries undertook to calculate the anticipation of the company as to those particulars, and divided the results into groups depending on time of issuance of policies. Adding 7% as the expense of investigation of claims, etc. they computed that the present worth of the disability payments to be made on the group of policies issued from 1918 to 1921 was \$17,831,626, but when it came to the report filed in court, took  $\frac{100}{135}$  of that figure, or roughly \$13,200,000. They computed the present worth of the anticipated premiums, less commissions to be paid to agents, etc., and in the case of the same group, determined that \$2,119,493 was the present worth of these future premium receipts. The results are tabulated:



3265	Present worth Future Disa- bility payments	Reduced to 100/135 (Approx- imate only)	Present Worth of Future Premiums
1918 to			
1921 .	\$17,931,626	\$13,200,000	\$ 2,119,493
1921 to			
1926	\$16,763,388	12,400,000	3,853,411
1926 to			
1931	\$19,725,474	14,600,000	8,535,553
1931 to			
1932	4,369,376	3,230,000	2,711,762
3266	\$58,689,864	\$43,430,499	\$17,220,219
		17,220,219	
		\$26,210,280	
Add reserve set up on policies issued after 1932		88,567	
		\$26,298,847	
3267	Deduct share of un- earned non-can pre- miums shown as un- earned premium re- serve on page 13 of Report (\$2,903,928)	1,612,830	
		\$24,686,017	Necessary Reserve

The figure is shown slightly different on page 13 of the Report. Incidentally with respect to policies issued after 1932, the present worth of

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3268 the claims was found to be \$2,729,689, which was less than the present worth of the premiums in the sum of \$3,021,185.

In course of time a profit from them could be anticipated, despite the apparent reduction to 90% in the scale of benefits proposed on them by the Commissioner.

3269 The figures available for policies issued between 1926 and 1931 do not show segregation in order to ascertain the exact amount subject to the percentages of benefits set forth in the Commissioner's plan. That is, on policies from 1926 to 1929 the proposed reduction is to 45% of benefits, and on policies from 1929 to 1931, to 55%. Assuming an average of 50% the present worth of the reduced benefits would be as follows in comparison with the present worth of the future premiums on the same groups:

			Present worth		Present worth
			old benefits	reduced benefits	Reduction benefits
					Present worth future premiums
1918 to 1921	\$13,200,000	20%	\$ 2,640,000	\$10,500,000	\$ 2,119,493
1921 to 1926	\$12,400,000	35%	\$ 4,340,000	\$ 8,060,000	\$ 3,853,411
1926 to 1931	\$14,600,000	(45% & 55%— average at 50%)	\$ 7,300,000	\$ 7,300,000	\$ 8,534,553
1931 to 1932	\$ 3,230,000	65%	\$ 2,099,500	\$ 1,130,500	\$ 2,711,762
1932 to Date	\$ 2,729,689	90%	\$ 2,456,100	\$ 273,589	\$ 3,021,185
Roughly			\$18,835,600		\$20,240,464

3271 Not only is there an anticipated pickup of over \$1,000,000 according to this rough computation, but the *polcies* issued from 1926 to 1931 show monthly benefits as follows:

1926 to 1929	\$3,259,960	(45% basis)
1929 to 1931	776,007	(55% basis)

50% as an average for the two groups is therefore probably too high, and a lesser rate than 50% for the average would reduce the total present worth of the disability payments below \$7,300,000 and would to the extent of such decrease, correspondingly increase the pickup mentioned.

3272 If the general theory is correct, then the option ought to be given and if the computations are not correct, the correct ones can be ascertained. One reason for the comparatively small size of the additional premiums necessary, lies in the fact that although there is a reserve allegedly necessary in the amount of over \$24,000,000 for the active non-cans the total deficiency in the company is only \$17,000,000. In addition there is the possibility of appreciation in assets, offset, perhaps, by losses on mortgage loans and real estate, for which some reserves have already been set up. Likewise, there is the

- 3274 possibility of salvage in suits against directors for declaration of dividends during 1934 and 1935, to the extent of almost \$1,000,000.

#### Rights of Stockholders

- For the period of five years, permit stockholders to recapture the Old Company by transfer of all assets of the New Company to the Old Company, on condition that stockholders of the Old Company not only provide capital for all
- 3275 reserves then necessary for continuation of future business at that time, but also pay off the participation certificates issued to non-cans who received less than full disability payments, for the amount of the deficiency thereof, and the participation certificates issued to non-cans who are not disabled but who paid additional premiums, to the extent of the amount of such additional premiums with interest at 6%.
- 3276 In event stockholders do not then rehabilitate the Old Company, issue the existing stock of the New Company in the sum of the \$1,000,000 to the holders of the participation certificates pro rata, and continue the obligation of the New Company to so devote profits of the various departments for transfer to the Non-Can Department to restore benefits to those who elect the

3277 first option, and in reduction of premiums of those who elect the second option.

Comments. The entire risk of loss falls on the non-cans, and they should have the benefit if by their sacrifices, liquidation is to be avoided that would be ruinous to stockholders, and life holders. Under the proposed plan, all life policies are quite as safe as under the Commissioner's plan, and they contribute nothing to assist in any rehabilitation.

3278 Stockholders should not have the present right to contribute capital, unless they contribute sufficient to restore the insolvency in full. If they have the right to contribute \$1,000,000, or any negligible sum, it creates a disproportion between the existing capital of \$1,000,000 and such contribution, without adding at all materially toward the restoration.

3279 Management of the New Company

Have 15 members of the Board of Directors of the New Company chosen 5 by each of the following groups: stockholders, life holders and non-can holders.

Debar all directors who participated in the declaration of dividends in 1934 or 1935 from occupying any position as Director.



3280 Hold the stock under a voting trust with equal representation as above indicated, until expiration of five years.

Comments. - The stockholders should be represented because of their right to recapture within five years. The life holders should be represented to see that proper dividends are declared on their participating policies. The non-cans should be represented because of restoration of non-can benefits. All groups will be interested in economical management.

At the expiration of five years, the stockholders should cease to have representation on the board, unless they restore solvency in full, in which case life and non-can holders would cease to have representation, equally.

Respectfully submitted,

3282

ROSCOE R. HESS  
(Roscoe R. Hess)

Endorsed: Filed Oct. 10, 1936. L. E. Lamp-ton, county clerk; by A. G. Stanham, deputy.

D.11.

**3283** [TITLE OF COURT AND CAUSE.]

**Petition in Intervention and Appearance of  
Certain Policy Holders of the Pacific Mu-  
tual Life Insurance Company of Cali-  
fornia.**

Come now Charles Ross Cooper, Irving H. Granicher, Raymond Vincent Knowles, Harry George Richard, Wilmot P. Rogers, John F. Hassler, Verne Reynolds Pentecost, Donald  
**3284** Vincent Nicholson, Horace Rowan Gaither and Hugh King McKevitt, owners and holders of non-cancellable income policies of The Pacific Mutual Life Insurance Company of California, and appear in the above entitled matter and intervene therein, and as and for such appearance and petition in intervention, specify and allege as follows:

**3285** 1. That said Charles Ross Cooper is the owner and holder of non-cancellable income policy numbered 2659704 issued by The Pacific Mutual Life Insurance Company of California under date of May 29th, 1919;

That said Irving H. Granicher is the owner and holder of non-cancellable income policy numbered 5513638 issued by The Pacific Mutual Life Insurance Company of California under date of April 15th, 1928;

3286 That said Raymond Vincent Knowles is the owner and holder of non-cancellable income policy numbered 5513673 issued by The Pacific Mutual Life Insurance Company of California under date of April 15th, 1928;

3287 That said Harry George Richard is the owner and holder of non-cancellable income policy numbered 4638108 issued by The Pacific Mutual Life Insurance Company of California under date of May 15th, 1923;

That said Wilmot P. Rogers is the owner and holder of non-cancellable income policy numbered 4666014 issued by The Pacific Mutual Life Insurance Company of California under date of March 10th, 1926;

3288 That said John F. Hassler is the owner and holder of non-cancellable income policy numbered 4669018 issued by The Pacific Mutual Life Insurance Company of California under date of May 26th, 1926;

That said Verne Reynolds Pentecost is the owner and holder of the following non-cancellable income policies issued by The Pacific Mutual Life Insurance Company of California, to-wit: numbers 4668070 and 4668071, which policies were issued under date of May 27th, 1926;

**3289** That said Donald Vincent Nicholson is the owner and holder of two (2) non-cancellable income policies issued by The Pacific Mutual Life Insurance Company of California in about the year 1923;

That said Horace Rowan Gaither is the owner and holder of non-cancellable income policy numbered 464112 issued by The Pacific Mutual Life Insurance Company of California under date of August 13th, 1923;

That said Hugh King McKevitt is the owner and holder of non-cancellable income policies, to-wit: numbers 4608452, 4621872, 4623029 and 4623192 issued by The Pacific Mutual Life Insurance Company of California under date of August 30th, 1921;

That all of the policies mentioned in this paragraph are in full force and effect;

**3291** 2. That the rehabilitation and reinsurance agreement attached to the petition of Samuel L. Carpenter, Jr., for approval of rehabilitation and reinsurance agreement filed in the above entitled matter is unjust, unfair and discriminatory against the owners and holders of non-cancellable disability income policies issued by The Pacific Mutual Life Insurance Company of Cali-

3292 fornia, including the intervenors mentioned in paragraph 1 hereof, and that said rehabilitation and reinsurance agreement discriminates unfairly and unjustly in favor of all other types of policy holders of said The Pacific Mutual Life Insurance Company of California.

3293 3. That said rehabilitation and reinsurance agreement is unjust and unfair and discriminatory in favor of the holders and owners of non-cancellable disability income policies of The Pacific Mutual Life Insurance Company of California, who have filed or made claim under said policies prior to July 22, 1936, and that said rehabilitation and reinsurance agreement discriminates unfairly and unjustly against the holders of non-cancellable disability income policies of The Pacific Mutual Life Insurance Company of California who have not filed or made claim prior to July 22, 1936.

3294 4. That this Honorable Court is without power or jurisdiction to approve, ratify or confirm the acts of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, acting as conservator herein, or approve, ratify or confirm said rehabilitation and reinsurance agreement, in that no adequate or proper showing has been made by said Samuel L. Carpenter, Jr., that there is a need for such rehabilitation, or that The Pacific Mutual Life Insurance Company of California was, at the time of

3295 the filing of said petition for approval of rehabilitation and reinsurance agreement, without sufficient reserve to adequately protect all types of policy holders and/or that said The Pacific Mutual Life Insurance Company of California was insolvent.

3296 5. That said petition for approval of rehabilitation and reinsurance agreement does not show that the assets of The Pacific Mutual Life Insurance Company of California were inadequate to meet all types of obligations which might arise from all types of policies written by said company and in existence at the time of the filing of said petition.

6. That due, proper and adequate notice as required by law was not given to the owners and holders of policies of The Pacific Mutual Life Insurance Company of California and to all interested parties.

3297 7. That said rehabilitation and reinsurance agreement is confiscatory and in violation of contract.

8. That said rehabilitation and reinsurance agreement is unfair, inequitable and against the best interests of all policy holders of The Pacific Mutual Life Insurance Company of California, and in particular said rehabilitation and reinsurance agreement is unjust, inequitable and against the best interests of the holders of non-cancellable disability income policies of The Pacific Mutual Life Insurance Company of California.



3298 9. That said rehabilitation and reinsurance agreement discriminates unfairly and unjustly in favor of non-cancellable policy holders of certain premium classes against non-cancellable policy holders of other premium classes of The Pacific Mutual Life Insurance Company of California.

10. That the percentage of the original monthly benefits assumed by Pacific Mutual Life Insurance Company, intervenor in the  
3299 above entitled matter, in the different classes of non-cancellable policy holders, is discriminatory and inequitable and without cause or justification.

11. That said rehabilitation and reinsurance agreement is unfair, unjust, and inequitable in other and further particulars.

12. That the said Insurance Commissioner of the State of California and the above entitled court acted without jurisdiction or right  
3300 in the purported sale of the assets of The Pacific Mutual Life Insurance Company of California to the Pacific Mutual Life Insurance Company.

13. That due and proper notice was not given to all interested parties with reference to said purported sale.

14. That said purported sale by Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, of the assets of The Pacific Mutual Life Insurance Company of California

3301 to the Pacific Mutual Life Insurance Company, was not made in accordance with law, is mere sham, and, in fact, no sale whatever.

Wherefore, your said intervenors pray that said rehabilitation and reinsurance agreement be held and adjudicated to be unfair, inequitable and unjust; that said sale of said properties and said assets of The Pacific Mutual Life Insurance Company of California be adjudicated void and of no effect, and that it be determined that 3302 The Pacific Mutual Life Insurance Company of California is not insolvent, and is capable of continuing business as it did prior to July 22, 1936, and for such other and further relief as may be meet and proper in the premises.

HUGH KING McKEVITT,

3303 *Attorney for Said Intervenors, Charles Ross Cooper, Irving H. Granicher, Raymond Vincent Knowles, Harry George Richard, Wilmot P. Rogers, John F. Hassler, Verne Reynolds Pentecost, Donald Vincent Nicholson, Horace Rowan Gaither and Hugh King McKevitt.*

Verified.

Endorsed: Filed Oct. 16, 1936, at 2 p. m.  
L. E. Lampton, county clerk; by A. G. Stanham,  
deputy. D.11.

**3304** [TITLE OF COURT AND CAUSE,]

**Answer of Respondents E. B. Tilton, Frank L. Stebbins, A. J. Russell, Richard E. Smith, Walter D. Fansler, Frank H. Higgins, and John T. O'Connell to Petition for Approval of Rehabilitation and Re-insurance Agreement and in Response to Order to Show Cause Made and Entered Herein September 25, 1936.**

**3305** For answer to said petition and in response to said order to show cause, said respondents E. B. Tilton, Frank L. Stebbins, A. J. Russell, Richard E. Smith, Walter D. Fansler, Frank H. Higgins and John T. O'Connell admit, deny and allege as follows, to-wit:

**I.**

**3306** That these answering respondents aforesaid are each holders of non-cancellable health and accident policies made, executed and delivered to each of them by said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, bearing the numbers, issued under the dates, and for the indemnity rate for total loss of time as set forth in the respective columns following, to-wit:

3307

Number of Policy	Name of Insured (Respondents Herein)	Date of Issuance of Policy	Indemnity Rate for Total Loss of Time
5512192	E. B. Tilton	December 14, 1927	\$200
5512073	Frank L. Stebbins	January 12, 1928	100
2668887	A. J. Russell	March 10, 1920	900
4618189	Walter D. Fansler	June 11, 1921	500
5525461	Frank H. Higgins	January 31, 1929	50
5512024	Frank H. Higgins	January 3, 1928	250
5611507	John T. O'Connell	October 6, 1930	100
5611508	John T. O'Connell	October 6, 1930	100
5520314	Richard E. Smith	September 19, 1928	200

That the premium on each of said policies has  
 3308 been paid in full to and accepted by said respondent, The Pacific Mutual Life Insurance Company, of California, a corporation, and each of said policies since the respective dates of their respective issuance, at all times prior to, and on the 22nd day of July, 1936, has been and still is in full force and effect.

## II.

That said respondents E. B. Tilton, Frank  
 3309 L. Stebbins and John T. O'Connell reside in Cook county, state of Illinois; respondents A. J. Russell and Richard E. Smith reside in the city of San Francisco, state of California; respondents Walter D. Fansler and Frank H. Higgins reside in the city of Minneapolis, state of Minnesota. All of said respondents except John T. O'Connell file this answer both in their capacity as individual holders of such policies and also as members forming a committee representing other holders of said policies who have requested

3310 said committee to represent them in these proceedings, which other policyholders reside in the states of Alabama, California, Illinois, Indiana, Iowa, Minnesota, New Jersey, New York, Ohio, Washington, and Wisconsin. That said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, has issued a large number of said policies, to-wit: in excess of 35,000; that said policies are held by practically as many policyholders widely scattered

3311 through most of the United States and several foreign countries. That the provisions of said so-called non-cancellable policies are substantially identical and all of said policyholders represent a class of persons too numerous to join individually in answering said order to show cause. That this answer is filed not only on behalf of the policyholders named herein, but on behalf of all others similarly situated who may join in the presentation of the objections hereinafter urged.

3312

### III.

That each of the said policies held by your respondents contains a provision in substantially the following language: "The insured shall have the right at the time of such expiration (one year from the date of the issuance of the policy) to renew this policy for the term of (specified) years by the payment of a like premium on the (date of issuance) in each succeeding year, provided, however, that this policy shall not be re-

3313 renewed beyond its anniversary date nearest the sixtieth birthday of the insured." That in some instances the policies provide for a different birthday beyond which the policy cannot be so renewed, but in the case of each of these said respondents such date has not yet been reached but is several years hence in the future.

IV.

3314 That at the present time none of these answering respondents is disabled in accordance with the terms of said policies, except said respondent John T. O'Connell. That said respondent John T. O'Connell suffered disability on or about August 1, 1936, in that he then suffered hemorrhage from duodenal ulcer which totally incapacitated him in his profession of physician and surgeon; that said disability still continues and will continue for several months hence; and that for such disability, despite due proof of claim, he has received no payments from any source.

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V.

That each of said policies of these answering respondents and all other non-cancellable income health and accident policies issued by said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, were each issued as the general obligations of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation.

That a full, true and correct copy of said policy issued to said respondent E. B. Tilton is



3316 hereto attached, marked Exhibit "A", and made a part hereof. That the provisions of each of the said policies of each of said other answering respondents are in substantially the same form as said Exhibit "A".

VI.

3317 That further answering said petition and said order to show cause, these said answering respondents allege that said Rehabilitation and Reinsurance Agreement attached to said petition and therein marked Exhibit "A" should not be approved by the order of the above entitled court and that the court should not make any of the other orders set forth in said order to show cause in paragraphs 1 to 9 thereof, inclusive, upon the following grounds, to-wit:

3318 (a) That said Rehabilitation and Reinsurance Agreement attached to said petition and marked Exhibit "A" and referred to in said order to show cause is unfair, inequitable and, as respects these answering respondents and all other holders of non-cancellable income policies similarly situated, is in point of law a fraudulent conveyance in that it provides for the payment in full or assumption in full of all claims, obligations and liabilities against the assets of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, except claims, obligations, and liabilities owing by said respondent corporation to these answering re-

3319 spondents and all other similarly situated non-cancellable income policyholders, which payment and assumption in full of all other such obligations, liabilities and claims is made possible solely and entirely at the expense of and injury to these answering respondents and all other holders of non-cancellable income policies similarly situated, in violation of law and of the legal rights of these answering respondents and all other holders of non-cancellable income policies similarly situated.

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(b) That said Rehabilitation and Reinsurance Agreement is unfair and inequitable and, with respect to these said answering respondents and all other holders of non-cancellable income policies similarly situated, constitutes in law a proposal and attempt to hinder, delay and defraud them and each of them of their rights as creditors of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, in that said proposed Rehabilitation and Reinsurance Agreement seeks to transfer and deliver all of the assets of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, to a new corporation heretofore formed out of part of the assets of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, which new corporation while assuming all other outstanding obligations, claims and liabilities of said respondent, The Pacific Mutual Life Insur-

3321

3322 ance. Company of California, a corporation, nevertheless purports under and by virtue of the terms of said Rehabilitation and Reinsurance Agreement to assume but a part or portion only of the contractual obligation of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, to these answering respondents and to all other non-cancellable income policyholders similarly situated.

(c) That said Rehabilitation and Reinsurance Agreement constitutes a conveyance in fraud of the rights of these answering respondents and all other non-cancellable income policyholders similarly situated, in that it is designed to and will make it possible for said petitioner and the stockholders of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, to eliminate a large portion of the said holders of non-cancellable income policies for much less than the legal value 3324 of their said policies, and thereby enable the stockholders of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, to buy back into their former old position at a price made low at the sole expense of the said holders of non-cancellable income policies.

(d) That if the said rehabilitation and reinsurance sections of the Insurance Code of the state of California be construed by the court so as to permit the making of such preferences

3325 among policyholders of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, as are contained in said rehabilitation and reinsurance agreement, then such sections of said Insurance Code and other pertinent provisions of the law of the state of California permitting such change in the contractual obligations of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, are unconstitutional and

3326 void, in that they are in violation of the provisions of article I, section 10, and of the Fourteenth Amendment of the Constitution of the United States of America and of the provisions of the Constitution of the state of California, article 1, section 13, and article 1, section 16, prohibiting the taking of property without due process of law and prohibiting the passing of any law which impairs the obligation of a contract.

3327 (e) That if the pertinent provisions of said Insurance Code and other laws of the state of California be so construed by the court as to permit the establishment of preferences between policyholders of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, in violation of their said contract rights, by the simple act of said petitioner under the provisions of the conservator or liquidation or rehabilitation or reinsurance sections of said

3328 Insurance Code, then the conferring of such powers upon said petitioner by the Legislature of the state of California is void as an unconstitutional delegation of legislative powers in violation of article 3, section 1, of the Constitution of the state of California.

VII.

3329 That these answering respondents and all other holders of non-cancellable income policies similarly situated are each interested in the assets of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, which assets provide security to all classes of policyholders holding all classes of insurance written and issued by said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, without discrimination, preference or priority.

VIII.

3330 That said Rehabilitation and Reinsurance Agreement discriminates against these said answering respondents and all holders of said non-cancellable income policies similarly situated and against said non-cancellable income policies, and gives priority and preference to all other classes of insurance written and issued by said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, over non-cancellable income policies held and owned by these answering respondents and held and owned by

3221 all other non-cancellable income policyholders similarly situated, which said discrimination, preference and priority is contrary to the contractual obligation of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, contained in each of said non-cancellable income policies.

IX.

3332 That the people of the state of California, by and through the duly elected, qualified and acting Legislature of the state of California, did enact chapter 145, Statutes of California, 1935, designated, known and cited as the Insurance Code. That said Insurance Code was duly enacted and adopted by the authority of the state of California, and said Insurance Code has been and will be enforced by an officer of the state of California, to-wit, said petitioner, Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, as conservator of said  
3338 respondent, The Pacific Mutual Life Insurance Company of California, a corporation. That the state of California, by the provisions of said Insurance Code, has conferred authority upon said petitioner as said Insurance Commissioner to enforce the provisions of said Insurance Code.

That the state of California, acting by and through said petitioner, said Insurance Commissioner, as such conservator, and acting by and through the Superior Court of the state of Cali-



3334 fornia, in and for the county of Los Angeles, a court of record, duly created and constituted by the people of the state of California and existing, will, if said proposed Rehabilitation and Reinsurance Agreement is executed by said petitioner, said Insurance Commissioner as conservator, and approved by the order of said court, discriminate against and deny to these said answering respondents and all other holders of

3335 said non-cancellable income policies similarly situated the equal protection of the laws, and will deprive them, and each of them, of their said property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America and in violation of article 1, section 10, of the Constitution of the United States of America, and in violation of article 1, section 13, of the

3336 Constitution of the state of California, and in violation of article 1, section 16, of the Constitution of the state of California.

## X.

That the said proposed act of said state officer, to-wit, said petitioner as said Insurance Commissioner, as said conservator, in proposing that said Rehabilitation and Reinsurance Agreement be executed by said persons named as parties

3337 thereto and approved by said court is unreasonable, arbitrary and capricious.

## XI.

3338 That these answering respondents allege that by virtue of section 1057 of the Insurance Code of the state of California, said petitioner, said Insurance Commissioner, as said conservator, in these proceedings is deemed to be a trustee for the benefit of all creditors and other persons interested in the estate of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, against whom these proceedings are pending.

3339 That said petitioner, as said Insurance Commissioner, as said conservator, has violated his oath of office and his statutory duty to act impartially as trustee for the benefit of all creditors and other persons interested in said estate of said respondent, by proposing said Rehabilitation and Reinsurance Agreement, and that said petitioner, therefore, should be removed by this court and that the court appoint a receiver or, in the alternative, a new conservator who will act as an impartial trustee for said respondent.

## XII.

For answer to paragraph IV of said petition, these answering respondents have no informa-

3340 tion or belief upon the subject sufficient to enable them to answer the allegations contained therein commencing on page 2, line 19, following the “;” with the words “that by” and ending on line 27 with the word “obligations,” and basing their denial on that ground, generally and specifically deny each and every allegation therein contained.

### XIII.

3341 For answer to paragraph V of said petition, these answering respondents have no information or belief upon the subject sufficient to enable them to answer the allegations therein contained, commencing on page 3, line 5, with the words “your petitioner” and ending on line 9 with the words “Old Company,” and basing their denials on that ground generally and specifically deny each and every allegation therein contained.

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### XIV.

For answer to paragraph VII of said petition, these answering respondents have no information or belief upon the subject sufficient to enable them to answer the allegations therein contained commencing on page 4, line 13, with the words “and on July 22, 1936,” and ending on page 5, line 2, with the word “organization,” and basing

3343 their denial on that ground generally and specifically deny each and every allegation therein contained.

XV.

For answer to paragraph VIII of said petition, these answering respondents deny that the proposed Rehabilitation and Reinsurance Agreement attached to said petition, marked Exhibit "A" and made a part thereof, affords to these 3344 answering respondents or all or any other non-cancellable income policyholder or holders similarly situated, any measure or opportunity of protection or any protection, or the protection to which they are entitled by reason of said non-cancellable income policies.

Wherefore these said answering respondents respectfully pray that said Rehabilitation and Reinsurance Agreement be not approved by this 3345 court in any manner whatsoever and that said order to show cause, made and entered herein September 25, 1936, be discharged. That said petitioner, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, be removed by the order of this court as conservator of said respondent, The Pacific Mutual Life Insurance Company of California, a corporation, and that the court appoint a receiver of said respondent in his place.

3346 For such other and further relief as to the court may seem meet and proper in the premises for the protection of these said answering respondents and all other holders of said non-cancellable income policies similarly situated.

BELL, BOYD & MARSHALL,

By DAVID A. WATTS,

KENYON F. LEE,

*Attorneys for Said Answering Respondents.*

3347

State of Illinois, County of Cook—ss.

E. B. Tilton, being by me first duly sworn, deposes and says, that he is one of the answering respondents in the above and foregoing matter; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

3348

E. B. TILTON.

Subscribed and sworn to before me this 14th day of October, 1936.

(Seal)

MARION R. STEIN,

*Notary Public in and for the County of Cook,  
State of Illinois.*

3349 State of Illinois, Cook County—ss.

I, Michael J. Flynn, county clerk of the county of Cook, do hereby certify that I am the lawful custodian of the official records of notaries public of said county, and as such officer am duly authorized to issue certificates of magistracy, that Marion R. Stein, whose name is subscribed to the annexed jurat, was at the time of signing the same, a notary public in Cook county, duly

3350 commissioned, sworn and acting as such and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said state of Illinois, all of which appears from the records and files in my office; that I am well acquainted with the handwriting of said notary, and verily believe that the signature to the said jurat is genuine.

3351 In testimony whereof, I have hereunto set my hand and affixed the seal of the county of Cook at my office in the city of Chicago, in the said county, this 14 day of October, 1936.

[Seal]

MICHAEL J. FLYNN,  
County Clerk.



3352

[EXHIBIT A.]

NON-CANCELLABLE INCOME POLICY

This policy provides indemnity for loss of life or time through accidental means, and for loss of time by sickness; to the extent herein provided.

Founded 1868

THE PACIFIC MUTUAL LIFE INSURANCE  
COMPANY OF CALIFORNIA

3353

(Herein Called Company)

Hereby Insures \* \* \* Earle B. Tilton \* \* \*  
(herein called Insured and described in the Application), subject to all provisions and limitations herein contained:

Against loss of life resulting directly and independently of all other causes, from bodily injury effected during the term of this policy solely through accidental means; and

3354

Against disability commencing while this policy is in force and resulting from bodily injury effected through accidental means; and against disability commencing while this policy is in force and resulting from sickness; as follows:

Loss of Life

Part A. The Company will pay \* \* \* Ten Thousand \* \* \* Dollars should loss of life as defined above result within one hundred and twenty days from date of the accident.

3355

### Total Loss of Time

Part B. (1) The Company will pay indemnity at the rate of \* \* \* Two Hundred \* \* \* Dollars per month for the period throughout which disability described above consists of continuous, necessary and total loss of all business time, but no indemnity shall be paid under this Part B, or under Parts D, E or F for the first\* three months of any period of such total loss of all business time, provided, however, that indemnity will be paid for the entire period of such total loss of all business time immediately succeeding a period of partial disability for the entire period of which benefits are payable under the provisions of paragraph (2) of this Part B.

3356

### Partial Loss of Time

(2) The Company will pay indemnity at the rate of one-half of the amount per month specified in paragraph (1) of this Part B, for any period or periods throughout which disability described above does not consist of total loss of all business time, but consists of continuous inability to prosecute important daily business duties, provided that in each instance the period of such partial disability immediately succeeds a period of total loss of all business time for which indemnity is payable under the provisions of paragraph (1) of this Part B, and provided further that indemnity for such period or periods of partial disability will not be paid for more than

3357

**3358** a total of six months during any continuous disability.

### Hospital Indemnity

**3359** Part C. Should the Insured, by reason of bodily injury or sickness covered by this policy, be under treatment and also be resident in a licensed hospital, the Company will pay, in addition to whatever other indemnity may be payable under this policy, monthly indemnity at the rate of 25% of the amount specified in paragraph (1) of Part B for the continuous period of such residence and treatment, commencing at the first day thereof and not exceeding three months, throughout which the Insured suffers a continuous, necessary and total loss of all business time, but such indemnity will not be paid for more than one period as the result of any one accident or disease or for more than one period during any continuous disability.

**3360** Loss of Both Hands, Both Feet, Hand and Foot or the Sight of Both Eyes

Part D. Should the Insured suffer, as a direct result of such injury or such sickness, the loss of both entire hands by complete severance at or above the wrists, or the loss of both entire feet by complete severance at or above the ankles, or the loss of one entire hand by complete severance at or above the wrist and one entire foot by complete severance at or above the ankle, or the irrecoverable loss of the entire

3361 sight of both eyes, he shall be deemed to have sustained a permanent disability resulting in continuous, necessary and total loss of all business time and the Company will pay indemnity at the rate per month specified in paragraph (1) of Part B as long as he shall live, or;

#### Loss of One Hand or One Foot

Part E. Should the Insured suffer, as a direct result of such injury or such sickness, the loss of one entire hand by complete severance at or above the wrist, or the loss of one entire foot by complete severance at or above the ankle, the Company will pay indemnity at the rate per month specified in paragraph (1) of Part B for the period during which such loss causes disability resulting in continuous, necessary and total loss of all business time, and at the termination of such disability will consider such loss to have caused a permanent disability of 25%, and will pay the Insured, as long as he shall live, monthly indemnity at the rate of 25% of the amount specified in paragraph (1) of Part B, or;

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#### Loss of the Sight of One Eye

Part F. Should the Insured suffer, as a direct result of such injury or such sickness, the irrecoverable loss of the entire sight of one eye, the Company will pay indemnity at the rate per month specified in paragraph (1) of Part B for the period during which such loss causes dis-

3364 ability resulting in continuous, necessary and total loss of all business time, and at the termination of such disability will consider such loss to have caused a permanent disability of 10%, and will pay the Insured, as long as he shall live, monthly indemnity at the rate of 10% of the amount specified in paragraph (1) of Part B.

\*No indemnity except Hospital Indemnity is payable under this policy for the specified first part of any period of disability.

3365

#### Standard Provisions

1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing  
3366 pertaining to any occupation so classified; except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.

If the law of the state in which the Insured resides at the time this policy is issued requires

3367 that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

2. No statement made by the applicant for insurance not included herein shall void the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3369 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

4. Written notice of injury or of sickness on which claim may be based must be given to the



**3370** Company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness. In event of accidental death immediate notice thereof must be given to the Company.

5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Company, at its Home Office, 501 West Sixth Street, in the City of Los Angeles, California or **3371** to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Company upon receipt of such notice, will furnish to the claimant such forms as are **3372** usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Company at its said office in case

**3373** of claim for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

8. The Company shall have the right and opportunity to examine the person of the Insured when and so often at it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an **3374** autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the Insured and subject to due proof of loss all of the accrued indemnity for loss of time on account of disability will be paid at the expiration of each month during the **3375** continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the Insured is payable to the beneficiary if surviving the Insured, and otherwise to the estate of the Insured. All other indemnities of this policy are payable to the Insured.

12. If the Insured shall at any time change his occupation to one classified by the Company

3376 as less hazardous than that stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

3377 14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

3378 15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

17. If the Insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Company, then in that case the Company shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like

3379 indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

3380 19. If a like policy or policies previously issued by the Company to the Insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$50,000.00, or the aggregate indemnity for loss of time on account of disability in excess of \$250.00 weekly, the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the Insured.

3381 20. The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty years. Any premium paid to the Company for any period not covered by this policy will be returned upon request.

#### Additional Provisions

21. This insurance does not cover, (1) any disability for which the Insured is not necessarily and regularly attended by a legally qualified physician other than the Insured; provided, however, that this requirement shall be waived in the event such attendance is declared by medical au-

3382 thority satisfactory to the Company to be unnecessary; (2) suicide, sane or insane, or any attempt thereat, sane or insane; (3) loss of life or disability resulting wholly or partly, directly or indirectly from (a) bodily injury sustained or sickness contracted while the Insured is engaged in military or naval service in time of war, (b) bodily injury or sickness caused by war or by any act of war, (c) bodily injury, fatal or non-  
3383 fatal, sustained, or sickness contracted by the Insured while in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith, or while operating or handling any such vehicle or device, (d) bodily injury sustained or sickness contracted except while the Insured is within Canada or Europe or the United States (not including Alaska, Panama Canal Zone or the insular possessions of the  
3384 United States), or while traveling between them by regular lines of passenger conveyance (not including aerial conveyance).

22. The allowance of indemnity under the provisions of either of paragraphs D, E or F shall proportionately reduce the monthly indemnity payable for all other loss or disability thereafter occurring.

23. After the first twelve months of disability, no indemnity shall be payable for any period



3385 of disability during which the Insured is not continuously within the United States (not including Alaska, the Panama Canal Zone or the insular possessions of the United States) unless a written permit to reside elsewhere be granted by the Company.

24. All premiums on this policy are due and payable in advance at the Home Office of the Company, but may be paid to any authorized  
3386 agent or manager of the Company producing receipts signed by the President, a Vice President, the Secretary or an Assistant Secretary, and countersigned by such authorized agent or manager. A grace of thirty-one days shall be granted for the payment of every premium after the first, during which time the insurance hereunder shall continue in force. After any default in payment of premium this policy may be rein-  
3387 stated as provided in Standard Provision Number 3 at any time within six months from the date of such default on written application by the Insured to the Home Office of the Company and the payment of the defaulted premium, provided the Insured shall with such application submit evidence of insurability satisfactory to the Company.

25. Indemnity for disability will not be paid under this policy at a rate in excess of the aver-



3388 age earnings of the Insured for the period of time that he has been actually employed during the two years immediately preceding the commencement of the disability for which the Company is liable, and all premiums paid during said two years for that portion of the disability indemnity in excess of the amount of such earnings will be returned upon request of the Insured. The Insured shall have the right to reduce any or all of the indemnities of this policy and upon his request and temporary surrender of the policy for endorsement, the Company will endorse it, making such reduction of indemnities and a proportionate reduction in premium.

26. At any time during the life of this policy, if the Insured changes his occupation to one different from that stated in this policy, the Company hereby agrees upon the surrender of this 3390 policy to issue in lieu thereof upon the written request of the Insured, a new policy containing the same provisions as this policy except a change in the amount of the benefits payable, the new policy to provide such an amount payable for loss of life and disability as the premium paid for this policy will purchase at the rates but within the limits fixed by the Company for such different occupation.

3391 If the age of the Insured has been mis-stated, any amount payable under this policy shall be that amount which the premium paid would have purchased at the rate fixed by the Company for the Insured's correct age; except, that if the true age of the Insured at the time of application for this policy is over fifty-five, the policy shall be null and void and the Company shall return all premiums received less any indemnity paid prior  
3392 to the ascertainment of the correct age.

27. The Insured is by occupation a Vice President of Bank classified Preferred by the Company.

28. The beneficiary under this policy is Della Lawrence Tilton whose relationship to the Insured is that of Wife. Any assignment of this policy must be in writing. The Company shall not be deemed to have notice of any assignment  
3393 unless nor until acknowledgment of said notice shall have been endorsed on the policy and signed by an executive officer of the Company. The Company shall not assume responsibility for the validity of any assignment. Any change of beneficiary under this policy shall take effect on the endorsement of the same on this policy and not before.

29. The annual premium for this policy is  
\* \* \* Ninety \* \* \* Dollars and the

- 3394 policy expires one year from its date. The Insured shall have the right at the time of such expiration to renew this policy for a term of 18 years by the payment of a like premium on the 14th day of December in each succeeding year, provided, however, that this policy shall not be renewed beyond its anniversary date nearest the sixtieth birthday of the Insured. Insurance under this policy is effective in consideration of the
- 3395 payment in advance of the premiums herein provided for and in further consideration of the statements made in the application for this policy, copy of which application is attached hereto and is hereby made a part of this policy. The falsity of any statement in the application, materially affecting either the acceptance of the risk or the hazard assumed hereunder, or made with intent to deceive shall bar all right to recovery
- 3396 under this policy. No provision of the charter, constitution or by-laws of the Company not herein set forth shall be used in defense of any claim arising under this policy. Failure to comply with any of the provisions of this policy shall render invalid any claim under this policy.

In Witness Whereof, The Company has, by its proper officers, signed this Contract in the City of Los Angeles and caused same to be counter-

**3397** signed by its authorized Agent or Manager, as of the Fourteenth day of December, 1927 twelve o'clock noon, Standard Time at the place of the Insured's residence.

S F McClung  
Secretary

George J. Cochran  
President

Examined

JB

Countersigned J W Smith  
Authorized Agent or Manager

**3398**

6

Hospital Indemnity Supplement No. 5146511

THE PACIFIC MUTUAL LIFE INSURANCE  
COMPANY OF CALIFORNIA

Accident Department

Should the Insured, by reason of bodily injury or sickness covered by the policy to which this Supplement is attached, suffer a continuous, necessary and total loss of all business time and

**3399** also be under treatment and be continuously resident in a licensed hospital, the Company will pay, in addition to the Hospital Indemnity payable under said policy, 75% of the amount per month provided in said policy for total loss of all business time for such portion of the period of such continuous residence and treatment as comes within the first three months of the disability causing it but Hospital Indemnity will not be paid under either or both said policy and this Hospital Indemnity Supplement for more

3400 than one period as the result of any one accident or disease; nor for more than one period during any continuous disability.

This Hospital Indemnity Supplement is issued in consideration of the payment of an additional annual premium of Ten and no/100 Dollars, to be paid at the same time as is the premium for said policy, and it takes effect upon the date of its issuance as regards Hospital Indemnity on account of bodily injury, and six months after 3401 said date as regards Hospital Indemnity on account of sickness. It expires concurrently with said policy and is subject to all provisions of said policy not inconsistent herewith.

Attached to and made a part of Policy No. 5512192 issued to Mr. Earle B. Tilton.

In Witness Whereof, The Pacific Mutual Life Insurance Company of California has, by its proper officers, signed this Hospital Indemnity Supplement in the city of Los Angeles and 3402 caused same to be countersigned by its Authorized Agent or Manager, as of the 14th day of December, 1927, twelve o'clock noon, Standard Time, at the place of the Insured's residence.

S F McChung  
Secretary

George J Cochran  
President

Examined  
JB

J W Smith  
Authorized Agent or Manager

3403

No. 5512192

THE PACIFIC MUTUAL LIFE INSURANCE  
COMPANY OF CALIFORNIA

Non-Cancellable Income Policy

Form A 382

Renewable to Age Sixty

Issued To

Earle B. Tilton

3404

This policy provides indemnity for loss of life or time through accidental means, and for loss of time by sickness; to the extent herein provided.

No indemnity except Hospital Indemnity is payable under this policy for the first part specified herein of any period of disability.

Please Read Your Policy

Application for Insurance—Accident Department

3405

THE PACIFIC MUTUAL LIFE INSURANCE  
COMPANY OF CALIFORNIA

I hereby apply for Non-Cancellable Income Insurance, to be based on the following representations and on the representations that I shall make in answer to the questions to be asked by the Company's Medical Examiner in continuation of this application.

1. What is your full name? (Please print)

Earle B Tilton



- 3406 2. Where do you reside? No. 2531 Jackson  
Av Street  
Town Evanston State Ills
3. Where and when were you born, and what  
is your age? Town Tiltonville. State or  
Country Ohio Month June Day 15  
Year 1886. Age at Nearest Birthday 41  
Years
4. What are your occupations? (Describe  
fully) Vice President
- 3407 5. What are the duties required of you? (De-  
scribe fully) Office
6. What is the name of your employer? The  
Bank of America
- 7a. How long in present occupation? 3 yrs.  
Years
- b. What was former occupation? Chase Nat'l  
Bk of N. Y.
8. What is the location of your employer's  
place of business? No. Madison & La  
Salle Street Town Chicago State Ills
- 3408 9. Whom do you designate as beneficiary un-  
der policy applied for, and what relation-  
ship is such beneficiary to you? (Please  
Print) If for Disability Benefits only,  
write "None" Della Lawrence Tilton. Re-  
lationship Wife
- 10 Does the disability indemnity applied for in  
this and other companies or associations to-  
gether with that under other insurance now  
held by you exceed your average monthly  
earnings? No.

**3409** 11. Are your personal habits correct and temperate? Yes.

12. Have you any Life, Permanent Total Disability, Accident or Sickness Insurance in this or any other company or association? (If in this Company, give policy numbers. State whether Accident and Sickness Indemnity is weekly or monthly.)

		Life Insurance		P. T. D.
<b>3410</b>	Company	Amount	Year Issued	Amount
	Equitable Life	10,000	12-1926	100.00
			Ord	
		15,000	Term	150.00
			12-1927	
	Mass Mut	20,000	Ord	Old
			12-1926	Form

Accident and Sickness Insurance

Company	Prin. Sum	Acc. Ind.	Sick Ind.
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**3411** Zurich

H & A	15,000	50	50
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13. Have you ever made application for life, accident or sickness insurance upon which you have not been notified of the action taken, or has any application ever made by you for life, accident or sickness insurance been declined or postponed, or has any policy of accident or sickness insurance issued to you

**8412** been cancelled or renewal refused by this or any other company or association? (Give particulars) No

14. Have you ever received or been refused compensation for accidental injuries or sickness, or have you any claim now pending? (Give particulars) Yes in Zurich. Burned Index Finger 10-3-27—\$16.00 Doctors Fee —PD. Electric Iron

**8413**

15. Have you ever had or have you now any bodily or mental infirmity or deformity (including hernia and rupture), or have you impaired hearing, any disease of either eye, lost a limb or the sight of an eye, or are you in any respect maimed or in unsound condition mentally or physically? (Give particulars) No

**8414**

16. Have you in contemplation—any hazardous undertaking—any special journey—or any traveling outside the United States? (Give particulars). No

17. Do you agree that the falsity of any answer in this application for insurance or any answer made to the Company's Medical Examiner in continuance of this application for insurance shall bar the right to recover thereunder if such answer is made with intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the Company? Yes

3415 18. Do you agree that the Company may make in the space provided "For Home Office Endorsements Only" such correction in or addition to this application as may be required, subject, however, to your ratification, which shall be conclusively presumed by your acceptance of any policy issued thereon? Yes For Home Office Endorsements Only A383—Part I—#9—None.

3416 19. Do you agree that if entire amount of annual premium for the insurance applied for is not paid at time of making this application, there shall be no liability on the part of the Company under this application unless nor until a policy is issued and delivered to you and entire amount of such annual premium actually paid during your lifetime and while you are in good health and free from injury, and do you further agree that if entire amount of such annual premium is paid to the Company's agent at time of making this application, insurance (subject to the provisions of the Company's regular policy of the form applied for) shall be effective from date of medical examination for said insurance, provided the Company in its judgment shall be satisfied as to your insurability under form of policy applied for, on date of such examination, and do you further agree that if the Company shall not be so satisfied, entire amount of premium paid, without interest, shall be returned? Yes.

3417

**3418** 20. Do you expressly waive, on behalf of yourself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has heretofore attended or examined you, or who may hereafter attend or examine you, from disclosing any knowledge or information which he thereby acquired? Yes.

**3419** Dated at Chicago Ills. this 13 day of Jan 1928  
Signed in the presence of F. F. Fulton Soliciting Agent

Earle B. Tilton

Applicant's own signature in full

Statement to Be Signed by Applicant for Settlement With Agent

No. 475048 I Hereby Declare that I have paid to F. F. Fulton Agent of The Pacific Mutual

**3420** Life Insurance Company of California One Hundred and no/100 Dollars, and that I hold his receipt for same, written on receipt form detached from, and corresponding in date and number with this application.

Date 13—

Cash—100/00, 1928

1/13/28—H Hooper.

Earle B. Tilton.

Applicant's own signature in full

